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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF ALABAMA  
5 SOUTHERN DIVISION  
6

7 UNITED STATES OF AMERICA,  
8 Plaintiff,

9 v.

10 KIMBERLY H. BRANCH,

11 Defendant.

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\* Case No. CR-15-MHH-0154-S

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Birmingham, Alabama

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August 11, 2015

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9:00 a.m.

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13 TRANSCRIPT OF TRIAL BY JURY, VOLUME II OF V  
14 BEFORE THE HONORABLE MADELINE HUGHES HAIKALA  
15 UNITED STATES DISTRICT JUDGE  
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22

23 Court Reporter:

24 Chanetta L. Sinkfield, CCR, RMR  
25 United States Federal Courthouse  
1729 Fifth Avenue North  
Birmingham, AL 35203

APPEARANCES

FOR THE PLAINTIFF: U.S. ATTORNEY'S OFFICE  
Assistant U.S. Attorney,  
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Court Reporter: Chanetta L. Sinkfield, CCR, RMR  
United States Federal Courthouse  
1729 Fifth Avenue North  
Birmingham, AL 35203

I N D E X

August 11, 2015; VOLUME II

*Direct Cross Redirect Recross Further Redirect***GOVERNMENT'S  
WITNESSES**

LANA STRICKLAND	167	186	192	195	
RANDY VISSER	196	273	292	316	320
FOREST HOUSNER	321	361	381		

**GOVERNMENT'S EXHIBITS****OFFERED****ADMITTED**

NO. 34		171	171
NO. 35		172	172
NO. 36		173	173
NO. 38/39		210	210
NO. 41		222	222
NO. 40		226	226
NO. 42		235	235
NO. 24		240	240
NO. 17		247	247
NO. 19		252	252
NO. 45		255	255

P R O C E E D I N G S

(9:05 a.m.)

(Out of the presence of the jury.)

THE COURT: We are here today in Case 15-154.  
Before the Court calls the jury back in, are there any matters  
that the Court needs to take up with the parties this morning?

MS. WICK: Yes, Your Honor. There's actually two  
matters. And with the Court's permission, we would like to do  
it in kind of reverse order, essentially.

There was a motion to quash that was filed last night,  
this morning, I am not a hundred percent sure what time it was  
filed, actually.

THE COURT: Okay. I have a copy of that.

MS. WICK: The issue was that the government issued  
a subpoena to previous counsel for the dealership in regards  
to one of the exhibits in this case, and the motion to quash  
discusses -- and I'll be honest with Your Honor, I think I got  
this five minutes ago, we had a very limited time to review  
it -- but essentially, it says that under the rules of  
responsibility, he can't testify to anything. The government  
would argue with that position. But having said that, given  
the logistics, defense counsel and I think that we can resolve  
through stipulations, essentially all the facts that that

1 attorney would testify to. So we're hoping that if we could  
2 have just a few more minutes to kind of discuss that, because  
3 I really don't want to rush defense counsel, I don't want him  
4 to feel pressured, but I think if we have a little bit of  
5 additional time, we may be able to resolve through stipulation  
6 what the government was calling that witness to testify to.

7 MR. BROOME: Judge, I appreciate her concern for me,  
8 but I don't feel pressured.

9 THE COURT: Then the Court will give the parties the  
10 time they need to work through this.

11 MR. BROOME: Judge, the only issue that I have,  
12 there was a subpoena that was issued.

13 THE COURT: Right. For Mr. Alan Baty.

14 MR. BROOME: No, Your Honor, I'm talking about the  
15 subpoena that was issued to Serra Nissan back on June 6th,  
16 7th, 8th of 2014. And I don't know if Your Honor has a copy  
17 of that.

18 May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 MR. BROOME: Judge, this would be the subpoena.

21 THE COURT: Thank you.

22 MR. BROOME: I don't even know who issued the --  
23 like I said, it's been issued by the clerk's office.

24 MS. WICK: The grand jury.

25 MR. BROOME: Judge, the subpoenas -- Your Honor can

1 read at the top there is issued to Serra Nissan.

2 THE COURT: Yes, sir.

3 MR. BROOME: Or is as we've been referring to the  
4 Birmingham store. And it asks for original deal jackets. Now  
5 the government thinks those mean initial original deal jackets  
6 that were the Birmingham made deal jackets. What was produced  
7 was the original deal jackets, which were made in Cullman, but  
8 sent to the Birmingham store because that's where all the  
9 accounting is done. I think Your Honor has already heard  
10 that.

11 THE COURT: Right. We were talking about green  
12 jackets and blue jackets yesterday. That different stores use  
13 different color jackets.

14 MR. BROOME: I don't know how I would get that  
15 subpoena in before the jury. I anticipate the government is  
16 going to argue that Ms. Branch didn't comply with that  
17 subpoena because she is trying to hide things. She is going  
18 to say, I gave them all -- and this would be a proffer -- what  
19 she would testify to is all the jackets that were in the file  
20 cabinet were the Cullman jackets. When they subpoenaed those  
21 original deal jackets for these deals, I gave them all that I  
22 had. That's what she will testify to.

23 Now I don't know if it's permissible to introduce a  
24 grand jury subpoena, but I think we would be at a disadvantage  
25 if the government is going to be able to argue we didn't

1     comply with that subpoena. We say we did without the jury  
2     actually seeing the subpoena. And how I would lay the proffer  
3     or lay the predicate to get that in, I was assuming I might do  
4     it through some of their officers that would have executed or  
5     seen the response to the subpoena. Maybe I can't do it that  
6     way.

7             THE COURT: Ms. Wick, what are your thoughts?

8             MS. WICK: Your Honor, I understand defense  
9     counsel's argument. And the government's only concern is if  
10    admitting the grand jury subpoena itself would in some way  
11    violate Rule 6(e), which at point, given the discussion, I  
12    don't think it reveals secretive matters that happened that  
13    the grand jury discussed in its deliberations. I think  
14    honestly the issue is just a mechanics problem. So if the  
15    parties could agree and stipulate to the admission of the  
16    subpoena, and the jury is allowed to review the language --  
17    the problem is that really asks them, and in some ways to  
18    interpret -- I think there's two separate arguments: What  
19    were they legally required to produce under the subpoena, and  
20    then what was her intent when she gathered the documents  
21    responding to the subpoena?

22            I think Mr. Broome's argument -- Mr. Broome's -- he  
23    wants to argue what she did when she essentially responded to  
24    that.

25            MR. BROOME: She is going to testify to that.

1 MS. WICK: The government doesn't have any objection  
2 to admitting the subpoena if we can mechanically -- if Ms.  
3 Branch testifies -- and we can admit the subpoena, has she  
4 seen it, we can ask her about it, that's fine. It's just  
5 mechanically their concern was that if the government can't  
6 admit it and then she doesn't testify and then there's no way  
7 to get it in, then there would be an issue.

8 So that's why I was saying I think the parties,  
9 through stipulations, may be able to agree to the admission of  
10 its authenticity, the basis for it. I don't think either  
11 party disputes that the grand jury -- that the petit jury  
12 would want to see the grand jury subpoena if our claim is that  
13 she read this, knew what it said, and submitted different deal  
14 jackets. So we don't have any objection to admitting the  
15 subpoena. The issue is is that there were additional facts,  
16 and those are what we think we can resolve through  
17 stipulation.

18 So the short answer to your question is I understand  
19 what Mr. Broome is saying, and I think frankly it's argument.  
20 It goes to the weight, not necessarily admissibility. But the  
21 government doesn't have any objection. And if we are going to  
22 argue this, that the jury be allowed to see that subpoena.

23 MR. BROOME: She will testify that's the subpoena  
24 she was given, I think, by Mr. Baty or e-mailed. She saw that  
25 subpoena and responded to it. And she responded to other



1 subpoenas for documents from them.

2 THE COURT: What is the relevance of all of this to  
3 the government's burden of proof with respect to the wire  
4 fraud claim that concerns conduct in March of 2013?

5 MS. WICK: It's extrinsic evidence to the coverup.  
6 That when the government issues a subpoena that asks for  
7 original deal jackets from Birmingham, the ones that they  
8 created to hide this from Nissan, it says original documents  
9 from Birmingham, which would have been those deal jackets, and  
10 that when she saw that she gave the Cullman deal jackets and  
11 didn't say -- there is absolutely no production of the 15 fake  
12 Birmingham deal jackets that she references in her June 2013  
13 e-mail that she was fully aware of. Then, she saw --

14 THE COURT: Let me interrupt you for just a minute  
15 please, Ms. Wick. This subpoena says, deal jackets, please  
16 provide the original deal jackets and all information included  
17 here therein for the following customers. And then there's a  
18 list of 15 customers -- well, there have been redactions. So  
19 you don't have the full customer names. If we're going to be  
20 asking the jury to interpret your documents, help me  
21 understand -- your contention is that the statement provide  
22 the original deal jackets conveyed to Ms. Wick and anyone else  
23 reading this subpoena. That the government wanted Birmingham  
24 deal jackets instead of Cullman deal jackets.

25 MS. WICK: Yes, Your Honor, because in June of 2014

1 -- first of all, let me go to the four corners of the  
2 document, it says at the top to Serra Nissan. There is  
3 absolutely no reference in that document, nor was there any  
4 reference in the e-mail to counsel of Serra Visser Nissan. As  
5 of that date, there have been zero reference of Serra Visser  
6 Nissan. All of the requests were Serra Nissan's documents.  
7 And the firm had represented to us, as they did yesterday in  
8 open court, that they only represented Serra Nissan  
9 Oldsmobile, which was Serra Nissan and Serra VW. So the firm  
10 that responded didn't even represent the entity, Serra Visser  
11 Nissan.

12 So there was absolutely nothing in that subpoena that  
13 indicated or in any of the communication that that was in any  
14 way related to anything having to do with Serra Visser Nissan  
15 until they responded with the original 15 deal jackets and not  
16 the 15 that the government requested.

17 MR. BROOME: Your Honor --

18 THE COURT: You had asked for the deal jackets for  
19 these customers. So if the customers bought the vehicles in  
20 Cullman, and those are the deal jackets for those customers,  
21 help me out.

22 MS. WICK: Okay. So they created two sets of  
23 documents. That's not in dispute.

24 THE COURT: Understood.

25 MS. WICK: We requested the original deal jackets

1 that Birmingham created.

2 THE COURT: It doesn't say the original deal jackets  
3 that Birmingham created.

4 MS. WICK: It says original deal jackets, and the  
5 subpoena is issued to Serra Nissan.

6 THE COURT: Right. Okay.

7 Mr. Broome, did you have something you wanted to say?

8 MR. BROOME: Judge, if Your Honor will look on the  
9 alternate stock numbers there on the subpoena --

10 THE COURT: Yes.

11 MR. BROOME: -- the C is for -- well, testimony  
12 would be that the C is for Cullman.

13 THE COURT: Okay.

14 MR. BROOME: And Your Honor, several months before  
15 that subpoena, the government had issued a search warrant for  
16 Serra Nissan and took everything that was there -- all the  
17 deal jackets for Birmingham and Cullman. And they say,  
18 though, and I don't dispute it, that those deal jackets, the  
19 bogus deal jackets for Birmingham didn't exist when they  
20 executed their search warrant. So I am not real sure how they  
21 could have existed in June of 2014.

22 MS. WICK: No, that's not correct, Your Honor.

23 MR. BROOME: Okay.

24 MS. WICK: So let me back up for a second. On the  
25 face of the subpoena -- and I am sorry because you have my

1 copy, so I don't have it in front of me.

2 THE COURT: Let me get a copy of it real quickly.

3 I'll be listening to you.

4 Let's take a break for a minute.

5 (A recess was taken at 9:18 a.m.)

6 (In open court. Jury not present at 9:19 a.m.)

7 THE COURT: Ms. Dowd, can I have you come up for a  
8 moment, please.

9 MS. DOWD: Yes, Your Honor.

10 MS. MARSHALL: Your Honor, may I please make the  
11 record clear. Ms. Wick testified that the law firm of White,  
12 Arnold, and Dowd represented Serra during the time of this  
13 subpoena, that is not true. We did not represent them at that  
14 time; Attorney Baty did.

15 THE COURT: Okay.

16 MS. WICK: I am sorry. I think that was an error.  
17 I apologize.

18 THE COURT: Ms. Dowd, the Court had a conversation  
19 with Ms. Marshall yesterday, and I thought it might be  
20 appropriate to have the same conversation with you.

21 MS. DOWD: She has relayed it to me, Your Honor, and  
22 I understand those restrictions fully. She told me yesterday.

23 THE COURT: All right. Thank you.

24 MS. DOWD: Thank you, Your Honor.

25 MS. WICK: So on the face of the subpoena, if you

1 look at stock number, that's the original stock number from  
2 Cullman. Old stock number was the fake number that was  
3 created in Birmingham. So that is the old stock number for  
4 the fake Birmingham deal jackets that we provided because we  
5 issued this to Serra Nissan, not Serra Visser Nissan. There  
6 was never any reference to Serra Visser Nissan, other than the  
7 original stock number in that list.

8 At the time that the subpoena was issued in June 2014,  
9 we had executed the search warrant in October of '13. When we  
10 did the search warrant, those deals were not in the deal that  
11 we found, which is why we issued the grand jury subpoena  
12 saying, please, produce the 15 Birmingham deal jackets with  
13 old stock numbers with the C in front of it.

14 There was absolutely nothing in this that the  
15 government felt was unclear that this was being issued to  
16 Serra Nissan. And actually, I think if Your Honor will permit  
17 me, I think there was an e-mail that may help clarify this.

18 MR. BROOME: Judge, can I respond briefly while she  
19 is looking?

20 THE COURT: Yes, sir.

21 MR. BROOME: Judge, I think it has made my argument  
22 even a little better. If they ask for the stock numbers, and  
23 those were the Cullman stock numbers, then that would be what  
24 she supplied. If they took all the deal jackets in a folder  
25 that didn't exist, how could they expect the deal jackets from

1       Birmingham to exist in June.

2               MS. WICK: No, Mr. Broome is not understanding.

3               MR. BROOME: That's probably true.

4               MS. WICK: The actual stock numbers for Serra Visser  
5 Cullman -- okay. Let me back up a minute. They kept all the  
6 deal jackets in one place. The search warrant was for Serra  
7 Nissan documents. We took some Serra Visser Nissan documents  
8 by accident. Those had to be returned because they were  
9 outside the scope of the search warrant. So then in June  
10 2014, we issued a subpoena that asked for the Birmingham deal  
11 jackets. They referenced the Cullman stock number, because  
12 when they committed the fraud, all they did was add --

13              MR. BROOME: Allegedly, Your Honor.

14              MS. WICK: When they committed the alleged fraud,  
15 they added the C under the old stock number for the Birmingham  
16 deal jackets. Okay.

17              There was an e-mail when Mr. Baty responded, and I  
18 think we took this out of the exhibit. Your Honor, if you can  
19 give us a minute.

20              There was an e-mail that he actually sent, after the  
21 fact, with the defendant's attestation that I believe he  
22 referenced on behalf of his client, Serra Nissan. I think at  
23 this point in time it's disingenuous to argue that Mr. Baty  
24 represented Serra Nissan Oldsmobile, Inc., which included  
25 Serra Nissan and VW only. There had never been any discussion

1 of the Serra Visser Nissan dealership. Mr. Baty and I had  
2 discussions about what documents specifically the government  
3 was looking for. None of those had anything to do with the  
4 Serra Visser Nissan deal. We actually had to return all of  
5 the Serra Visser Nissan deals that were outside of the scope  
6 of the search warrant that was never a part of this. And it's  
7 not until they responded to the subpoena that they produced  
8 Cullman deal jackets and, say, here are the documents  
9 responsive to your requests for Serra Nissan documents. It's  
10 Cullman deal jackets.

11 So to say now, well, they were really asking for the  
12 Serra Visser Nissan documents, because there is absolutely no  
13 way or reflection of anything that happened at the time the  
14 subpoena was issued.

15 MR. BROOME: Your Honor, obviously, I don't know  
16 anything about conversations that may or may not have taken  
17 place, and I don't dispute that it took place. I think you  
18 have to take the subpoena on its face as to what they asked  
19 for.

20 Kim will testify you go to the file cabinet where all  
21 the jackets were -- I think the government will concede the  
22 Cullman jackets and the Birmingham jackets were kept in the  
23 same file cabinet because they took them all to start with.  
24 Yes, I have been told they had to give the Cullman jackets  
25 back. And she responded to the subpoena with the only thing

1 that was in the file cabinet at the time. She will testify to  
2 that.

3 MS. WICK: I think it's perfectly acceptable for Ms.  
4 Branch to testify to that and to explain -- I think that's  
5 argument. That's not a legal basis for keeping it out.

6 If Your Honor looks at page 2 of Government's Exhibit  
7 23, that's the e-mail I was referring to for Mr. Baty where he  
8 states: I realized last week that I did not include a  
9 certification from Serra Nissan when I produced the 15 deal  
10 files most recently requested by the grand jury.

11 There is absolutely no reference to Serra Visser  
12 Nissan or any suggestion that those documents are from  
13 anything other than Serra Nissan. Everybody's understanding  
14 of what that subpoena was to Serra Nissan for Serra Nissan  
15 deal jackets as this e-mail indicates. It's not until she  
16 submits the certification that she, says: I am the controller  
17 for Serra Nissan Oldsmobile, Inc., and Serra Visser Nissan,  
18 Inc., and adds that information in there and then says: These  
19 are true and original copies of just, essentially the Serra  
20 Visser documents.

21 So Bill, he is right. He should get to argue whatever  
22 her understanding was and what she thought at the time she --  
23 I mean, that is absolutely her prerogative. That is her right  
24 to testify. But I think, again, it goes to the weight, not  
25 the admissibility of the fact that that subpoena was issued



1 for Serra Nissan documents. It was clear to everyone it was  
2 for Serra Nissan documents. What they responded and whether  
3 that was a coverup or an honest mistake is argument not -- it  
4 doesn't negate the relevance of it.

5 THE COURT: All right. The initial question was can  
6 the subpoena go to the jury? Can the jury have this to  
7 understand the scope of the subpoena and have some context for  
8 the argument that you all are making about what the subpoena  
9 does and doesn't say? And I am trying to understand where all  
10 of this would be going if we give this subpoena to the jury.

11 I want you to be careful, Ms. Wick, about saying in  
12 front of the jury what everyone understood when this subpoena  
13 was issued, because I don't know what everyone understood. I  
14 can read the language of the subpoena. And because you are  
15 asking for -- because the subpoena requests the deal jackets  
16 for these customers and provides the stock number for these  
17 vehicle sales, whether it's clear or not, we can have some  
18 more discussion about it if we need to. But I think it would  
19 be a stretch to say that this would be clear to everybody.

20 MS. WICK: Oh, I agree, Your Honor. I think that's  
21 why we can, through stipulations, just simply set forward the  
22 facts s. I don't think we disagree about the facts of what  
23 happened. I think like you said, it's argument as to the  
24 intent and what that meant. So I think if the parties  
25 stipulate to certain facts, very basic facts, essentially, the

1 date of the subpoena, that it was issued to Serra Nissan and  
2 if the subpoena goes in, I think the stipulations in terms of  
3 the evidence can be very narrow, and then the parties can  
4 argue, and she is welcome to testify what their intent was  
5 when she responded. And that would be argument in terms of  
6 the implication of those facts. But I think the actual  
7 stipulations would be very narrow and confined to what the  
8 evidence was regarding this.

9 THE COURT: All right. Then with those  
10 stipulations, there would be no need for the government to  
11 call Mr. Baty.

12 MS. WICK: Exactly.

13 THE COURT: How long do you all need to work on  
14 those stipulations?

15 MS. WICK: So I have a rough handwritten draft that  
16 is in no way acceptable to be filed with the Court. I would  
17 like for Mr. Broome to have an opportunity to really read  
18 them, review them, and then I think we can type something up  
19 relatively quickly.

20 THE COURT: Is Mr. Baty somebody who you plan to  
21 call this morning?

22 MS. WICK: He was the third witness we intend to  
23 call this morning, Your Honor.

24 THE COURT: All right. Can we go ahead and do a  
25 couple of witnesses, take a break, and let you all finish up

1 the stipulations after we hear from a couple of witnesses so  
2 that the jury can go ahead and get started?

3 MS. WICK: Oh, sure, Your Honor. I think there were  
4 a number of people present on this. So whatever the Court  
5 wants to do in terms of resolving it versus going ahead with  
6 witnesses, the government is ready to do whatever you prefer.

7 THE COURT: Okay. I am just concerned. It sounds  
8 like we could be here for another hour or so trying to work  
9 through this.

10 MS. WICK: 15 minutes, Your Honor? I mean, that  
11 would be up to Mr. Broome.

12 THE COURT: All right. Let's take 15 minutes. If  
13 you don't have it done in 15 minutes, then we're going to get  
14 started with witnesses. And you all can figure the rest of  
15 this out when you have a little more time.

16 MS. WICK: Your Honor, one other issue. Would you  
17 allow the counsel to approach the bench for this one?

18 THE COURT: Sure.

19 (The following proceedings were held at the bench, out of the  
20 hearing of the jury:)

21 MS. WICK: Yesterday, we had a trial prep session  
22 with Harold Yelverton. I am so sorry. My brain is mush.  
23 Forest Housner. He is a witness that the government  
24 anticipates to calling today.

25 THE COURT: Okay.

1 MS. WICK: In prior sessions, it wasn't as apparent  
2 until last night that Mr. Housner seems to have suffered some  
3 effects of some surgery he had and seems to be having medical  
4 problems that resemble kind of early onset dementia in terms  
5 of his recall. We talked with his wife and discussed it with  
6 counsel, and there is an issue of --

7 MR. BROOME: His counsel, Your Honor.

8 MS. WICK: His counsel, Your Honor. Sorry, to be  
9 clear, not defense counsel. We notified defense counsel this  
10 morning in regards to e-mail.

11 MR. BROOME: They did.

12 MS. WICK: Frankly, Your Honor, we wanted to put  
13 defense on notice that this was an issue. The problem is that  
14 he doesn't remember the medical issues. I believe his wife  
15 would be able to testify, and we don't want to call the wife.  
16 We're going to try to elicit that during direct, but he  
17 frankly doesn't remember that he doesn't remember. He knows  
18 that there are some issues. And we just wanted to flag the  
19 issue for the Court and for defense counsel. At this point in  
20 time, it was really more just a Jencks disclosure issue in  
21 terms of --

22 THE COURT: So you want to impeach your own witness  
23 about his ability to remember?

24 MS. WICK: Impeachment is not really the right word.  
25 It was more just disclosing the issue to defense counsel.

1 Because if we knew that we felt we had to disclose it to him  
2 in terms of the difference between his statements prior to  
3 that.

4 THE COURT: But are you telling the Court, but are  
5 you telling defense counsel this, because if Mr. Housner  
6 doesn't give the testimony that the government is hoping he  
7 will give, you want to be in a position to impeach him saying  
8 that he doesn't really remember well because he has these  
9 medical issues?

10 MS. WICK: He may not say that. We may not be able  
11 to elicit that testimony. Because if he doesn't remember, he  
12 doesn't remember why he doesn't remember. So I am not going  
13 to impeach him if he doesn't say that. I just really,  
14 literally, it was a disclosure issue. I may get up today, and  
15 he may remember everything.

16 MS. MURNAHAN: It seems unlikely.

17 MS. WICK: But it seems unlikely given the  
18 deterioration, he may remember some things and not other  
19 things. He is a critical witness in this. And so, as you can  
20 tell from the opening, Mr. Broome kind of referenced him. We  
21 didn't feel like we couldn't put him up. But we have to ask  
22 him what he remembers. And if he doesn't know that he doesn't  
23 have any recall issues, I can't then pressure him or continue  
24 to ask him about what he doesn't know.

25 So I really just wanted the Court and Mr. Broome to

1 know it was an issue. It's just unclear that there's anything  
2 we can do about it, to be frank.

3 MR. BROOME: Judge, he is more of a defense, witness  
4 in my opinion, than he is a government witness, if you had to  
5 put labels on him. He is pretty critical to my defense. If  
6 they hadn't of called him, I would have called him. To say  
7 what I said in opening statement, I still expect that's what  
8 he will say -- I have never talked to him. His lawyer, Mr.  
9 Bell, who is a friend of mine, and I respect him, he didn't  
10 want me talking to him because he is a target and could be and  
11 we thought was going to be charged. He had a perforated colon  
12 and has been undergoing treatment for probably a little over  
13 six months.

14 THE COURT: Okay. Well, thank you for the notice.  
15 We'll see how things play out.

16 MS. WICK: Your Honor, we just didn't want it to  
17 happen.

18 MR. BROOME: You sent me an e-mail last night. You  
19 did. Last night to tell me about some health issues of a  
20 witness, and I just assumed it was Mr. Housner.

21 THE COURT: Okay. Let's go ahead and try to get the  
22 subpoena issue worked out so that the jury is not sitting for  
23 too long. If it looks like you can't get it done, I would  
24 just, out of respect for them, I don't want them sitting back  
25 there for too long while y'all try to work it out. I would

1 think if need be, we could push Mr. Baty after lunch if he is  
2 going to have to be a witness, and y'all could work this out  
3 at lunch.

4 MS. WICK: We can just let it go now and let him  
5 know he will be called after lunch and then work on the lunch  
6 break on it.

7 THE COURT: If you all can manage that. It's just  
8 that it's 9:30 already. So, you know, the sooner. I just  
9 hate for juries to sit.

10 (Conclusion of bench conference.)

11 (In open court. Jury not present.)

12 MS. WICK: Essentially the situation has been  
13 resolved. Because of the logistics of burning it and getting  
14 it to Tammi and printing it, I think it would be easier if we  
15 go forward with the witness. I think the situation that has  
16 been resolved sufficiently that the motion to quash is moot  
17 and that the government would not need to call Mr. Baty. And  
18 we would release him from the subpoena based on defense  
19 counsel's representations that the stipulations as drafted and  
20 agreed on are ready to go. They just need to be mechanically  
21 gone over and printed and signed.

22 MR. BROOME: Your Honor, I have discussed the  
23 stipulation with Mr. Baty, and since I didn't represent Kim at  
24 the time, he has agreed that that's correct.

25 THE COURT: All right. Then based on the party's

1 representations to the Court, the Court finds that the motion  
2 to quash is moot. The Court anticipates that the government  
3 will not call Mr. Baty as a witness in this case. The Court  
4 will give the parties the time they need to finalize the  
5 stipulations. And if that concludes this matter, I will  
6 dismiss Mr. Baty and Mr. Rose and anyone else who is here to  
7 talk about the motion to quash.

8 MS. WICK: Thank you, Your Honor.

9 MR. BROOME: Thank you, Your Honor.

10 MS. DOWD: Thank you, Your Honor.

11 (In open court. Jury present at 9:56 a.m.)

12 THE COURT: Good morning. I apologize for you all  
13 having to wait a bit this morning. We had some business that  
14 the lawyers had to work through, and we have finished that  
15 now. So I am going to ask the government to please call its  
16 next witness.

17 MS. MURNAHAN: Your Honor, the United States calls  
18 Lana Strickland.

19 THE COURTROOM DEPUTY: Please remain standing and  
20 raise your right hand.

21 Do you swear or affirm to tell truth, the whole truth,  
22 and nothing but the truth so help you God?

23 THE WITNESS: I do.

24 THE COURTROOM DEPUTY: Will you state your first and  
25 last name.



1 THE WITNESS: Lana Strickland.

2 THE COURTROOM DEPUTY: Will you spell your first  
3 name.

4 THE WITNESS: L-a-n-a.

5 THE COURTROOM DEPUTY: Thank you.

6 DIRECT EXAMINATION

7 BY MS. MURNAHAN:

8 Q Good morning, Ms. Strickland.

9 A Good morning.

10 Q Where do you live?

11 A I live in Spring Hill, Tennessee.

12 Q Where did you go to college?

13 A Auburn University.

14 Q Did you graduate from there?

15 A Yes.

16 Q What was your degree in?

17 A BA in English.

18 Q Did you do any post-graduate work?

19 A I did some post-graduate work at the University of South  
20 Carolina in linguistics.

21 Q Did you finish that?

22 A No.

23 Q Where do you work now?

24 A Nissan North America.

25 Q Where is that located?

1 A Franklin, Tennessee.

2 Q Is that near Spring Hill?

3 A That's a little bit north of it, yes.

4 Q What is your title at Nissan North America?

5 A I am a senior audit analyst.

6 Q What does that position do?

7 A A lot of numbers work. Various things from tracking  
8 financials through the system, making sure that what we do in  
9 audit goes through the system correctly. It involves a  
10 risk-based analysis, helping us select which dealers are going  
11 to be audited. We only audit a certain portion, so we do a  
12 risk-based analysis, and I am in charge of that. Numbers like  
13 that.

14 Q When did you start at Nissan North America?

15 A February of 2000.

16 Q You have been there the whole time since then?

17 A Yes, ma'am.

18 Q Did you start out as a senior analyst auditor, or did  
19 you --

20 A I began just as a title analyst.

21 Q Okay. And worked your way up?

22 A Yes.

23 Q Ms. Strickland, as part of your job as a senior auditor  
24 analyst, analyst auditor, were you asked to do any sort of  
25 analysis, the incentive payments that Nissan North America

1 paid to Serra Nissan in Birmingham?

2 A Yes, ma'am.

3 Q Who asked you to do that?

4 A A paralegal for our legal department.

5 Q What information were you given to perform that analysis?

6 THE COURT: Can we have a time frame for this,  
7 please?

8 MS. MURNAHAN: Of the analysis? Or when she was  
9 asked to perform the analysis?

10 THE COURT: Just generally, what are we talking  
11 about? Because yesterday, there was an attempt to put into  
12 evidence some audit information from 2010. So I am wondering  
13 what audit information this is.

14 MS. MURNAHAN: I understand, Your Honor.

15 BY MS. MURNAHAN:

16 Q Were you asked to perform an analysis of incentive  
17 payments that were paid in the March 2000, April 2013 time  
18 frame to Serra Nissan?

19 A Yes, ma'am.

20 MS. MURNAHAN: Is that --

21 THE COURT: Yes, ma'am. Thank you.

22 BY MS. MURNAHAN:

23 Q What information were you given to perform this analysis?

24 A I was given a list of 15 vehicle identification numbers,  
25 along with the customer information that went with them.

1 Q What program did you use to do this analysis?

2 A We have inhouse program called Vehicle Incentive  
3 Management System, also known as VIMS.

4 Q VIMS? Is that a program you use on a day-to-day basis?

5 A Daily basis.

6 Q You are familiar with it?

7 A Yes, ma'am.

8 Q What specifically were you asked to do with this  
9 analysis?

10 A To take these 15 vehicles and take them out of their  
11 sales for that time frame.

12 Q By they, you mean Serra Nissan sales?

13 A No, take it out of Serra's.

14 MS. MURNAHAN: Okay. I am going to show you what  
15 has been marked as Government's Exhibit 34. Permission to  
16 approach the witness?

17 THE COURT: Granted.

18 BY MS. MURNAHAN:

19 Q If you could take a look at that.

20 A (Witness complying.)

21 Q Ms. Strickland, are you familiar with that document?

22 A Yes, ma'am.

23 Q What is that document?

24 A This is a simulation of the effect of any changes in  
25 audits to a vehicle's incentives -- I am sorry, to a

1 dealership's incentives.

2 Q Did you create this document?

3 A Yes, ma'am.

4 Q Looking at it, does this appear to be a true and accurate  
5 copy of the analysis you prepared?

6 A Yes, ma'am.

7 MS. MURNAHAN: Government moves to admit  
8 Government's Exhibit 34.

9 MR. BROOME: Judge, if this nice lady said she  
10 performed all of these, I have no objection to it coming in.

11 THE COURT: It's admitted.

12 MS. MURNAHAN:

13 Q I am going to hand you what's been marked as Government's  
14 Exhibit 35. Hang on to that. Do you recognize that document?

15 A Yes, ma'am.

16 Q What is that document?

17 A These are the other vehicles that are affected by the  
18 change of 15; those 15 affected the rest of these on this  
19 list.

20 Q Okay. So this was another piece of the analysis that you  
21 performed on Serra Nissan's incentive payments?

22 A Yes, ma'am.

23 Q You created that document?

24 A Yes, ma'am.

25 Q Does this appear to be a true and accurate copy of the

1 analysis that you prepared?

2 A Yes, ma'am.

3 MS. MURNAHAN: We move to admit Government's Exhibit  
4 35.

5 MR. BROOME: Judge, the same, I went to law school  
6 to be a lawyer instead of a mathematician. If she says these  
7 numbers are correct, I would agree with her. We have no  
8 objection to it being admitted.

9 THE COURT: Government's Exhibit 35 is admitted.

10 BY MS. MURNAHAN:

11 Q And finally, I am going to hand you what has been marked  
12 as Government's Exhibit 36. Do you recognize that document?

13 A Yes, ma'am.

14 Q What is that?

15 A This is the list of the 15 audited vehicles that were  
16 changed.

17 Q So that was the information you were given --

18 A Yes, ma'am.

19 Q -- to perform your analysis -- and you may not have  
20 created that document, but was it created through your system?

21 A It was created through the VIMS system, yes, ma'am.

22 Q This is what you used to do the analysis?

23 A Yes, ma'am.

24 Q Does that appear to be a true and accurate copy of the  
25 analysis or of the listing that came out of the VIMS system?

1 A Yes, ma'am.

2 MS. MURNAHAN: Government moves to admit Exhibit 36.

3 MR. BROOME: Judge, if Ms. Strickland says she did  
4 this, we have no objection.

5 THE COURT: It's admitted.

6 BY MS. MURNAHAN:

7 Q Ms. Strickland, would you go back to Government's Exhibit  
8 34.

9 MS. MURNAHAN: Permission to publish, Your Honor?

10 THE COURT: Granted.

11 BY MS. MURNAHAN:

12 Q I am going to direct you -- Ms. Gold, would you call up  
13 the very top portion of this (indicating).

14 Ms. Strickland, as this document indicates, what was  
15 the scope of your audit? What was the time frame of the deal  
16 that you were looking at?

17 A I pulled information for one quarter, which would  
18 basically be January through the beginning of April.

19 Q Of what year?

20 A 2013.

21 Q Total vins, what is that number?

22 A That is the number of sales they had during this time  
23 frame.

24 Q And again this is for Serra Nissan?

25 A Yes, ma'am.

1 Q Okay. So if Serra Nissan sold 504 cars in the first  
2 calendar quarter of 2013 --

3 A Yes, ma'am.

4 Q -- were those only new cars?

5 A Only new cars, yes, ma'am.

6 Q This doesn't count, used cars, or --

7 A We're not interested in that part.

8 Q Nissan, the manufacturer, is only concerned with new?

9 A Yeah.

10 Q And below that 504, there's a number 15. What is that?

11 A That's the number of vehicles that were adjusted, the 15  
12 on the list.

13 Q Okay. If you could call out that middle section. Thank  
14 you.

15 "Program payments." So I am going to take you down to  
16 the "net amount." What is that amount?

17 A That is the grand total of the effect that all these  
18 adjustments would have.

19 Q Okay. So is that the total amount of money that Serra  
20 Nissan got for reporting these cars?

21 A Yes, ma'am.

22 Q Okay. Let's break that amount down. And just for the  
23 jury's sake, would you please read out that number.

24 A \$82,750.

25 Q So could we call out the bottom section of that and pull



1 it up. Thank you.

2 So the section that has the dealer traded, and there's  
3 15 vins, so those are the 15 cars?

4 A Yes, ma'am.

5 Q What does payments number, with that 23, what is that?

6 A Each payment may have more than one payment on it,  
7 different programs, different amounts. So those 15 vehicles  
8 had 23 payments on them.

9 Q So, more than one incentive payment at any given time?

10 A Mm-hm.

11 Q So what was the total?

12 A \$17,950.

13 Q Okay. So to be clear, those 15 vehicles generated  
14 \$17,950 in payments of whatever type?

15 A Yes, ma'am.

16 Q Well now I am going to break that down a little bit. So,  
17 can we go to the page of that same Exhibit 4.

18 What does that page show?

19 A This is a detailed listing. It is breaking down the  
20 adjustments according to program. We have one, two, three,  
21 four programs showing on this page. Various small ones. A  
22 small program on the top for one vehicle. It's kind of hard  
23 to read that.

24 Q Well, Ms. Gold, would you please call up the very -- the  
25 top section. If you could go down one more. Yeah.

1 A These are pretty straightforward, just payments on three  
2 different vehicles, \$500, \$600, and a \$1,350 payment. Each of  
3 these vehicles are what the debit would be for each of those  
4 three different programs.

5 Q So these are three other incentive programs that were  
6 running on those 15 vehicles?

7 A Yes, ma'am.

8 Q Now I am going to jump to the next page. Would you  
9 please call that up, Ms. Gold.

10 A We have one program on this page, March bonus cash. It  
11 affects one, two, three, four, five vehicles, and those five  
12 vehicles have a total debit of \$5,000.

13 Q So that March bonus cash, as it says up here by the  
14 program, that was another, yet another incentive program that  
15 was running on those vehicles at the time?

16 A Yes, ma'am.

17 Q Can we get rid of that and go back to the previous page.  
18 I am sorry I'm jumping around so much. Ms. Gold, would you  
19 please call out that bottom big section. Okay.

20 What is this? What does this section show?

21 A This is labeled up at the top, February, March DVB. DVB  
22 is the dealer volume bonus.

23 Q What was that a major incentive program that was running  
24 at the time?

25 A Yes, ma'am. This was the most significant one. And it

1 has the levels and tiers. And the higher they go in the  
2 levels is the more they get paid out.

3 Q And so what does this analysis show?

4 A This shows that the list of 15 vehicles, all 15 were in  
5 this program. But if those 15 were debited, that's what's  
6 listed at the top, and each of those would be debited \$700 in  
7 this one program. That's all that's on the top is that list  
8 that are directly debited. However, when these are debited,  
9 it has an overall effect on the program. They drop from one  
10 level to a lower level.

11 Q Okay. We'll go through that in a minute.

12 A Okay.

13 Q When you say debited, you mean subtracted?

14 A Yes.

15 Q When these 15 cars were subtracted, how much was in  
16 dealer volume bonus was subtracted?

17 A For the other vehicles?

18 Q Just for these 15.

19 A Just for these 15, that would be the \$10,500 that's  
20 listed. Audit adjustments.

21 Q So if we added together the \$10,500, the small amounts  
22 \$1,350, \$600, \$500 from the other programs, incentive programs  
23 that were running, and the \$5,000 from the March bonus cash,  
24 is that how you arrived at that \$17,950 figure?

25 A Yes, ma'am.

1 Q Okay. So that's the breakdown of the incentive payments  
2 that were made on those 15 cars?

3 A Yes, ma'am.

4 Q Now, I want to go to Government's Exhibit 35.

5 MS. MURNAHAN: Permission to publish, Your Honor?

6 THE COURT: Granted.

7 MS. MURNAHAN: Thank you.

8 BY MS. MURNAHAN:

9 Q Before we call out anything on this, you have mentioned  
10 that removing those 15 cars impacted the dealer volume bonus  
11 on other cars. Can you explain what that meant?

12 A Yes, on the dealer volume bonus, the more vehicles a  
13 dealership sells, the higher they go, and it affects every  
14 vehicle in the program. So if they sell a certain amount,  
15 they get a certain payment amount on every vehicle. If they  
16 go up a level, it gets increased for every single vehicle in  
17 the program. This adjustment dropped their levels. So where  
18 they were at a high level, every vehicle now is at a lower  
19 level and gets paid less.

20 Q Okay. So when they hit the bonus initially, they were at  
21 tier level two. How much did they get per car for tier level  
22 two?

23 A In all total \$700.

24 Q Okay. And removing these 15 cars impacted their  
25 attainment of tier level two?

1 A Mm-hm.

2 Q Did it drop them down to tier level one?

3 A Yes.

4 Q How much did they get per car for tier level one?

5 A \$300.

6 Q So how much needed to be subtracted for every car?

7 A So they dropped \$400 per car.

8 Q So they got an extra \$400 per car that they didn't  
9 actually earn?

10 A Yes, ma'am.

11 Q So going to page 1 -- 4 of Government's Exhibit 35.

12 Would you please call out, Ms. Gold, the very totals at the  
13 bottom.

14 How many cars were impacted by Serra Nissan's  
15 inclusion of those 15 sales?

16 A There were 162 other vehicles.

17 Q Okay. And how did you arrive at that amount of \$64,800?

18 A That is basically the 162 vehicles times \$400 each.

19 Q And \$400 is the difference between the tier levels?

20 A Yes, ma'am.

21 Q I want to do a little high level math with you now, Ms.  
22 Strickland.

23 Can we put that ELMO up? Okay. All right. I am in  
24 Mr. Broome's camp as far as technology goes.

25 MR. BROOME: That's not a good thing.

1 (Laughter from the audience.)

2 BY MS. MURNAHAN:

3 Q So looking at the analysis that you prepared and only  
4 talking about the dealer volume bonus incentives, how much in  
5 dealer volume bonus incentives on those 15 cars did Serra  
6 Nissan receive?

7 A Let's see, on 15 that, would be the \$10,000 and  
8 something. \$10,500.

9 Q Okay. All right. Would that dealer volume bonus have  
10 paid the same to Serra Visser Nissan in Cullman?

11 A Yes.

12 Q Did Serra Visser Nissan hit the tier two level?

13 A Yes, ma'am.

14 Q So they would have gotten the same amount of money for  
15 those cars in dealer volume bonus?

16 A Yes, ma'am.

17 Q Okay. Can you see what I am writing?

18 A Yes, now I understand, yes.

19 Q So you said Serra Visser Nissan had hit their dealer  
20 volume bonus level?

21 A Correct.

22 Q So removing these 15 cars from their sales level did not  
23 drop them down a tier, did it?

24 A Correct.

25 Q Okay. So did they lose anymore money?

1 A No, when they -- by not reporting these sales, they had  
2 the \$10,500 in question.

3 Q All that Serra Visser Nissan lost was \$10,000?

4 A Correct.

5 Q It did not impact any other cars?

6 A Correct.

7 Q So that's going to be a zero. So their total -- but it  
8 did impact Serra Nissan, correct?

9 A Correct.

10 Q And what was the total impact to other cars in the dealer  
11 volume bonus to Serra Nissan?

12 A That's the \$64,800.

13 Q Now I have to do the high level math.

14 A You are on the right track.

15 Q Auditor, am I correct?

16 A You are correct.

17 Q \$75,300. So would it be a fair statement to say that  
18 reporting those 15 deals correctly at Serra Visser Nissan,  
19 those cars were worth \$10,500?

20 A Yes, ma'am.

21 Q Would it also be fair to say that by falsely reporting  
22 those 15 deals at Serra Nissan, those cars were worth \$75,300.

23 A Yes, ma'am.

24 Q That's the extent of my technology. Can we pull up  
25 Government's Exhibit 36?

1 MS. MURNAHAN: Permission to publish, Your Honor.

2 THE COURT: Granted.

3 BY MS. MURNAHAN:

4 Q And this is simply the list of deals.

5 A It is a list of 15 deals, yes.

6 Q There's nothing -- we can take that down.

7 Ms. Strickland, are you familiar with the term  
8 "pooling of sales"?

9 A No, ma'am.

10 Q Okay. It's not something you typically hear?

11 A That's not a term that I am familiar with.

12 Q Okay. In your experience with Nissan North America --  
13 and you said you have been there for 15 years?

14 A Yes, ma'am.

15 Q Okay. Is it permissible for a dealership to report a  
16 sale of a vehicle that it didn't actually sell?

17 A No, ma'am.

18 Q Dealerships can do something called a dealer trade, can't  
19 they?

20 A Yes, ma'am. That's fairly frequent.

21 Q How would that work?

22 A Basically, they find a dealership to trade with. Very  
23 frequently, this is to find the customer the precise vehicle  
24 they want. And they go through a process where they trade the  
25 vehicle, they trade the asset, and they actually have to



1 contact some of our administrative people in the regions to do  
2 a system change. So that goes from one dealer's inventory to  
3 the other dealer's inventory.

4 Q Okay. Would that transfer have to occur before the sale  
5 to the end customer actually occurred?

6 A Correct. Our systems don't allow -- we can't just type  
7 in any vehicle number. It has to be within their inventory to  
8 be reported. So it has to be moved into their inventory by  
9 Nissan.

10 Q Okay. Is that a quick process?

11 A No, it's an overnight process.

12 Q So if a dealer traded on one day, they could not actually  
13 sell the vehicle until the next day?

14 A Until the next day, or report it.

15 Q By report it, what do you mean?

16 A Actually put it in the system. Then can sell it  
17 whenever, and they can report itself days later, according to  
18 how the paperwork is going.

19 Q Report it to Nissan?

20 A Report it through our Nissan systems, yes, ma'am.

21 Q Through what process would they call that?

22 A They call it an RDR.

23 Q Okay. Have you heard the term CMO?

24 A Ages ago. It's a very old term. Old dealership style.

25 I came here to Nissan 15 years ago, and I think we had a total

1 of six dealerships that were CMOs still, but they were on the  
2 way out.

3 Q What does that imply?

4 A We also call them sister stores. Basically, two  
5 locations together have one sales objective, have one target.  
6 And it doesn't matter if a vehicle sold at one dealership or  
7 the other, it will count towards their objective.

8 Q Okay. To be a sister store, can they have different  
9 parents, so-to-speak. Can the owners be different?

10 A It has to be the exact same owner.

11 Q Exact same owner?

12 A It's practically the same store. It just has two  
13 locations. It's the same ownership, same person.

14 Q So if there was an overlap of ownership but not  
15 completely identical, would that count?

16 A No.

17 Q You said it's an old practice, does Nissan do this  
18 anymore?

19 A No.

20 Q Okay. When do you think it was phased out?

21 A It was phased out before we left to California, so that  
22 was in 2006. I would guess, 2004 or five.

23 Q Okay. Were any CMO groups or sister store groups allowed  
24 to keep that arrangement?

25 A No, it took a little while to phase it out, but it was

1 all phased out.

2 Q So there were no more CMO sister store groups after the  
3 phase out?

4 A Correct.

5 Q And in December of 2012, were there any sister store  
6 groups in North America or America?

7 A No, ma'am.

8 Q Were Serra Visser Nissan and Serra Nissan considered  
9 sister stores?

10 A No, ma'am.

11 MS. MURHANAN: One moment, Your Honor.

12 BY MS. MURNAHAN:

13 Q Ms. Strickland, you stated earlier that it was not  
14 appropriate for a dealership to report that it sold a car that  
15 was actually sold at another dealership?

16 A Correct.

17 Q How do you know that?

18 A We have a set of rules. We have both the sales and  
19 service agreements that sets up the whole dealership  
20 relationship with Nissan. It has certain rules, as well as  
21 the C & I rules, the contest and incentive rules, that are  
22 published with all programs.

23 Q Okay. How would someone who worked at a dealership know  
24 that?

25 A They are required to read those rules. If they don't

1 accept those rules, they can't even report vehicles.

2 Q Going back to a dealership reporting a car sold when it  
3 was sold at another dealership, could that be accidentally  
4 done?

5 A No, it requires a great deal of effort. It's not  
6 straightforward in any way, starting with the system dealer  
7 trade.

8 Q Are there are a lot of moving parts in that, essentially?

9 A Yes, ma'am.

10 Q You said it would start with the dealer trade. So once  
11 the dealer trade quote unquote had happened, what other  
12 accounting entries or entries on the records would have to be  
13 entered?

14 A I can't tell you exactly, other than they do need to  
15 trade the asset from one set of books to the other set of  
16 books. But they shouldn't be sharing books if it's two  
17 separate dealerships, as well as there is paperwork involved  
18 in the actual deal jackets.

19 Q So it's an involved process?

20 A Yes, ma'am.

21 MS. MURNANHAN: Nothing further, Your Honor.

22 THE COURT: All right. Cross examination, please.

23 MR. BROOME: Yes, Your Honor.

24 CROSS EXAMINATION

25 BY MR. BROOME:

1 Q Ms. Strickland, we appreciate you coming down from  
2 Tennessee today. Would it surprise you --

3 MR. BROOME: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. BROOME:

6 Q I will show you what's been marked as Government's  
7 Exhibit 37.

8 Mr. Byrnes testified yesterday those were the official  
9 rules for this dealer volume program. What do you call that,  
10 I may have misspoke?

11 A We call them C & I rules. But yes, these are the rules.

12 Q Well, take a second and read through there, and I will  
13 tell you what you are not going to find. You said it was not  
14 permissible to pool stores and things, and that would be in  
15 the rules. You just testified to that, didn't you?

16 A Yes, sir.

17 Q It ain't in there, ma'am, but please look through there  
18 and make sure.

19 A Okay. It does not say that directly. It does imply it,  
20 though.

21 Q Well, it doesn't say it, though, does it?

22 A No.

23 Q Nowhere?

24 A No, sir.

25 Q The highlighted one is mine, I will tell you that. In

1 the three pages, where does it even imply that?

2 A I would say in 1-A where it says that the vehicle must be  
3 available in the dealer inventory and delivered at the  
4 dealership.

5 Q Okay. Well, you also told me that it was okay if we had  
6 the dealer trades; is that right?

7 A Yes, sir. Absolutely.

8 Q And you said that took a long time like two days?

9 A It's an overnight process, yes, sir.

10 Q Okay. Well, I guess time is relative. That's not a very  
11 long time if you got a 30- or 45-day incentive program, is it?

12 A Yes, that's fine.

13 Q So it would have been perfectly okay with your rules --  
14 and I call it the Cullman store and the Birmingham store  
15 because I am pretty simple-minded?

16 A Yes, it is easier.

17 Q Yes, it is. If the Cullman store had dealer traded all  
18 15 cars to the Birmingham store, and let's say they did it on  
19 -- let's make this easy -- they did it on March the 23rd.

20 Okay?

21 A Okay.

22 Q The Birmingham store could have sold those cars on March  
23 the 24th, if they had done all the paperwork?

24 A Reported them, yes.

25 Q Okay. And that would have been okay?

1 A Yes, sir.

2 Q And that's 24 hours, give or take, an hour or two?

3 A Yes, sir.

4 Q Now let me go back to Government's Exhibit 34. Again,  
5 the highlighting is mine.

6 The period of time we're talking about, January the  
7 1st, 2013 to April the 2nd, this would just be the Birmingham  
8 store?

9 A Yes, sir. This only pertains to the Birmingham store.

10 Q Okay. And during that three-month period, the Birmingham  
11 store sold 504 cars?

12 A Yes, sir.

13 Q And you took out the 15 cars?

14 A The 15, yes.

15 Q And you have got here, sales misreporting. What is that?

16 A That's a percentage. So if you take that 15 and say 2.97  
17 percent to 504.

18 Q Let's make it easy on me again. Three percent.

19 A Okay.

20 Q Right. So their error rate, three percent of their total  
21 sales?

22 A Yes.

23 Q And your program payments, you got \$2,660?

24 A Yes, sir.

25 Q Tell me what that is.

1 A That is for that 504 vehicles, there were 2,000-some odd  
2 payments on those vehicles.

3 Q So with my simple math, that's about five incentive  
4 payments per car?

5 A Yes, sir.

6 Q Give or take?

7 A Yes.

8 Q And that totaled how much?

9 A Those are the big numbers, \$648,800.

10 Q Okay. So just on incentive payments, the Birmingham  
11 store for their 504 cars got \$648,000?

12 A Yes, sir.

13 Q And correct me if I am wrong, they also got money from  
14 the dealership for selling the car, right?

15 A That would be on that list.

16 Q No, I thought this was just program payments. Don't I  
17 get -- like if the car costs \$30,000, and I sell it for 35, I  
18 made \$5,000?

19 A I got you. Yes, that's an addition. That's separate  
20 from Nissan.

21 Q That's not included in that figure?

22 A No.

23 Q And when all is said and done, you guys are saying you  
24 lost \$64,800?

25 A In the dealer volume bonus.



1 Q Right. I mean, that's the figure?

2 A Right.

3 Q Okay. And at some point in time, the sister stores, it  
4 was okay to pool sales?

5 A Even when they were called sister stores, when we had  
6 those, it was never called pooling. As I said, I am not  
7 familiar with that term.

8 Q I may have come up with that term myself. What do they  
9 call it?

10 A Well, they didn't have to dealer-trade vehicles. They  
11 can report them at their own stores. It didn't really matter  
12 where they were reported.

13 Q But again, I could have dealer traded the Cullman 15  
14 deals to Birmingham the next day, sold those cars in  
15 Birmingham to the same customers from Cullman, right?

16 A If they had driven up to Birmingham.

17 Q Okay. Well, they wouldn't have even had to have done  
18 that, would they? I could have gotten drivers to have carried  
19 the cars to them to Cullman, couldn't I?

20 A No, sir. Actually, they do require delivery at the  
21 dealership.

22 Q Okay. So they would have had to come -- I know you are  
23 not from here -- but Cullman to Birmingham is 30 miles?

24 A Yeah.

25 Q Give or take. And I may be wrong about that.

1 A Yeah.

2 Q And they would have RDR'd them in Birmingham, and they  
3 would have been just fine for your incentive program?

4 A Correct.

5 Q That's all I have ma'am. Thank you.

6 THE COURT: Ms. Murnahan, anything else?

7 MS. MURNAHAN: Yes, just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. MURNAHAN:

10 Q Ms. Strickland, I am going to hand you Exhibit 37.  
11 Again, can you review that and tell the jury where it says in  
12 that document not to steal money from Nissan?

13 A It doesn't say that.

14 MR. BROOME: Judge, I am going to object to that  
15 question.

16 THE COURT: Overruled.

17 A It doesn't say that directly.

18 BY MS. MURNAHAN:

19 Q Okay. Could that be something that's implied?

20 A I would believe so.

21 Q Let me take that back.

22 Mr. Broome had you discussing the dealer trade  
23 process. Can you dealer trade a car that had already been  
24 sold to an end customer?

25 A Not within the rules, no. No, ma'am.

1 Q Okay. So once the customer purchases the car, is that  
2 car removed from inventory and it's not possible to dealer  
3 trade it?

4 A You can do it systematically. However, it would be a  
5 misreport. We expect the reporting to reflect what actually  
6 happened.

7 Q Okay. Mr. Broome also had you looking at Government's  
8 Exhibit 34, the sales misreporting percentage.

9 A Yes.

10 Q And 2.97 is the percentage -- 15 is 2.97 percent of 504?

11 A Yes, ma'am.

12 Q If you know, what was the average misreporting rate for a  
13 dealership of the size of Serra Nissan?

14 A I would estimate somewhere around 2 percent, I would  
15 guess.

16 Q Okay. So this is a little bit higher?

17 A A little bit higher. I would say this is not necessarily  
18 an accurate number. This only is about those 15 vehicles. Of  
19 course, there's no review of any of the rest of the vehicles  
20 going on.

21 Q So there could be other errors or misreporting that was  
22 not accounted for in this analysis?

23 A Correct. Correct.

24 Q And talking about the sister stores, and you said that  
25 they were not required to dealer trade?

1 A There would be no need to. They have a shared objective,  
2 or they had a shared objective.

3 Q Are they considered one dealership?

4 A Systematically, yes.

5 Q They shared inventory?

6 A Correct.

7 Q So there would be no need to --

8 A Let me back track. If they conceptually shared  
9 inventory, it would be, of course, in two separate locations  
10 and marked in two separate locations.

11 Q But the inventory available to each store would be the  
12 same, it would be --

13 A Yes, ma'am.

14 Q -- across all of the sibling stores?

15 A Correct.

16 Q Okay. And the sales objectives, when you talked about  
17 that, would the sister stores only have one number?

18 A Correct. Only one.

19 Q So one store wouldn't have 100 and the other store have  
20 70?

21 A Correct.

22 Q The total for both stores would be 170?

23 A It wouldn't matter if one store sold one and the other  
24 sold 169, they had 170.

25 Q Okay.

1 MS. MURNAHAN: Nothing further, Your Honor.

2 MR. BROOME: Recross examination.

3 RECROSS EXAMINATION

4 BY MR. BROOME:

5 Q Ms. Strickland, I am sorry I didn't ask you this to start  
6 with, would it be fair to say that Nissan North America's a  
7 multibillion dollar corporation?

8 A Yes, sir. Yes.

9 Q Okay. Thank you.

10 MR. BROOME: That's all I have. Thank you.

11 THE COURT: Ms. Strickland, you may step down.

12 THE WITNESS: Thank you.

13 MS. WICK: Your Honor, may we gather some exhibits  
14 for the next witness to expedite things before we call the  
15 next witness?

16 THE COURT: Yes.

17 Jurors, if you all want to stand up and stretch your  
18 legs for a moment, you are welcome to do that.

19 MS. WICK: Your Honor, at this time, the government  
20 would call Mr. Randy Visser. I believe he is being brought in  
21 right now.

22 THE COURTROOM DEPUTY: Will you remain standing and  
23 raise your right hand, please.

24 Do you swear or affirm to tell the truth, the whole  
25 truth, and nothing but the truth so help you God?

1 THE WITNESS: I do.

2 THE COURTROOM DEPUTY: Thank you. Please be seated.

3 Will you state your first and last name.

4 THE WITNESS: Randy Visser.

5 THE COURTROOM DEPUTY: Thank you.

6 DIRECT EXAMINATION

7 BY MS. WICK:

8 Q I'm sorry, Mr. Visser. Just give me one second.

9 Mr. Visser, could you tell the jury where you are  
10 originally from.

11 A I am from Michigan.

12 Q Where do you live now?

13 A I live in Vestavia Hills.

14 Q Can you tell the jury about your educational background.

15 A I graduated from Michigan State University with a BS in  
16 accounting in 1993.

17 Q Did you have any post-graduate work?

18 A No, I did not.

19 Q Did you get any licenses or certificates?

20 A I did receive my CPA license.

21 Q What does that stand for?

22 A Certified public accountant.

23 Q Can you tell the jury what your experience in the car  
24 industry is.

25 A I have held many positions in the car business. I

1 started as a salesperson. I moved up to finance manager,  
2 sales manager, general manager. I have approximately 20 years  
3 of experience in the car business.

4 Q Are you married?

5 A Yes, I am.

6 Q Do you have any kids?

7 A Yes, I do.

8 Q How many?

9 A Three boys, 14, 12, and 11.

10 Q When did you start at Serra Nissan?

11 A It was 2007. I started at Serra Nissan as a general  
12 manager.

13 Q Who owned Serra Nissan at the time you started?

14 A It was owned by Tony Serra and my wife Kristina Visser.

15 MS. MURNAHAN: I am sorry, Your Honor, I apologize  
16 for interrupting you. We have just been alerted that the  
17 audio from the court is being transmitted through the speaker  
18 in Room 735. And I don't believe there's anyone in there at  
19 the moment, but we probably need to -- is that one of the  
20 witness rooms?

21 THE COURT: Tammi, would you go check on that,  
22 please?

23 THE COURTROOM DEPUTY: Yes, ma'am.

24 MS. MURNAHAN: I apologize.

25 (Brief pause.)

1                   THE COURT: All right. Are we ready to go, please?

2       BY MS. WICK:

3       Q     Mr. Visser, I am sorry. What was your title at Serra  
4       Nissan in March 2013?

5       A     I was a general manager.

6       Q     What were your job responsibilities as the general  
7       manager?

8       A     I was to oversee all operations.

9       Q     What did that include?

10      A     Staffing, advertising, and all operations, general  
11     service parts, sales, advertising, and staffing.

12      Q     In 2013, in March, who at the dealership reported  
13     directly to you?

14      A     Forest Housner reported directly to me.

15      Q     Okay. Did anyone else report directly to you?

16      A     Not directly. They all reported to Forest Housner, the  
17     director of operations.

18      Q     Were there ever times where anyone else came straight to  
19     you before Forest?

20      A     Occasionally.

21      Q     Would one of those people be Ms. Branch?

22      A     Occasionally.

23      Q     You mentioned you were responsible for staffing. Were  
24     you responsible for hiring any of the Serra Nissan employees  
25     in late 2012?



1 A I don't recall specifically, but I am sure I was. I have  
2 handled primarily staffing managers. The managers handled  
3 staffing of salespeople and service advisors and people under  
4 them. But I primarily handled the staffing of managers all  
5 throughout.

6 Q Were you involved in hiring the defendant, Kimberly  
7 Branch?

8 A Yes, I was.

9 Q And what was your involvement in that process?

10 A I placed an ad, and I interviewed applicants, and I hired  
11 Ms. Branch.

12 Q So you interviewed Ms. Branch?

13 A Yes, I did.

14 Q Did you know her work experience prior to Serra Nissan?

15 A Yes, I did.

16 Q What was it?

17 A She had worked at two dealerships, and I don't recall the  
18 names, but she had significant experience as a controller.

19 Q Do you remember when she started at Serra Nissan?

20 A It was approximately three years ago. I don't remember  
21 the exact month, but it is approximately three years ago. I  
22 believe it was some time in 2012.

23 Q Do you know if she was a controller at the dealerships  
24 prior to Serra Nissan?

25 A Yes, I believe she was, yes.

1 Q What was Ms. Branch's pay structure when she started?

2 A She was on salary of \$100,000 a year, and she had 2  
3 percent of the net profit as a bonus monthly.

4 Q What is the net profit?

5 A The net profit is money the dealership makes after  
6 expenses. So gross minus expenses is the net profit.

7 Q Which dealerships did she make net profit off of?

8 A Serra Nissan and Serra Volkswagen, that was one  
9 corporation, and then Serra Visser Nissan in Cullman.

10 Q Okay. Serra Nissan VW was one corporation?

11 A Correct.

12 Q Was it called Serra Nissan Oldsmobile, Inc?

13 A Correct.

14 Q Then Serra Visser Nissan was a wholly separate company?

15 A Yes.

16 Q That was the dealership in Cullman?

17 A That's correct.

18 Q But she got net on both?

19 A That's correct.

20 Q Okay. At some point, did that change and expand?

21 A Yes, in 2013, I don't recall the month, but she came to  
22 have some duties at Talladega Ford.

23 Q But that was separate from the Birmingham and the Cullman  
24 locations?

25 A That's correct.

1 Q Would the 2 percent net that you are talking about have  
2 included incentive payments from Nissan North America?

3 A Yes.

4 Q What were Ms. Branch's job responsibilities as the  
5 controller?

6 A To oversee the office and to make sure that the paperwork  
7 flow ran through the office, efficiently, and reconciled bank  
8 statements, produced financial results, and submit them to  
9 manufacturers, Nissan Volkswagen; submit tax returns, handle  
10 all of the accounting duties of the dealership.

11 Q How would she be involved with incentive payments from  
12 Nissan North America?

13 A She would have to reconcile the payments from what the  
14 sales department set up; with what they told her that the  
15 dealership was to earn, she would reconcile those payments as  
16 they came in.

17 Q Would that require interaction with people in the sales  
18 department and the sales process?

19 A If there was a discrepancy. If they told her that we're  
20 supposed to get one incentive and we get paid another  
21 incentive, she would have to get with them and say, they paid  
22 us short, can you look into it?

23 Q But it was her job to make sure that what you were paid  
24 in incentives is what you were entitled to in incentives?

25 A No, that wasn't her job.

1 Q Whose job was that?

2 A That was my job.

3 Q Okay.

4 A Ultimately.

5 Q I am sorry. I didn't mean to interrupt you.

6 If there was a discrepancy between what you felt you  
7 were entitled to and what Nissan paid you, whose job was it to  
8 financially calculate that?

9 A Well, if she had taken it to the sales manager first and  
10 say, you set up this -- you set up X amount, we got paid Y  
11 amount, why are we short? I typically would get involved in  
12 that, if there was a discrepancy, and we would see was it  
13 right or was it wrong.

14 Q What was her role in the audit process when Nissan  
15 audited the dealership?

16 A Very limited role. We would give her the deals to pull  
17 and she would pull the deals. We would also -- the auditor  
18 would typically request a list of deals pulled from our  
19 accounting system, and they would typically request that in  
20 Excel format, please give me your sales in Excel from this  
21 period to this period, and that would normally be extracted  
22 from our accounting system. So Ms. Branch would do that. She  
23 would extract that list.

24 Q So she would be responsible for sending the Excel  
25 spreadsheet with all the accounting data in the primary phase

1 to Nissan, and she would be responsible when she requested a  
2 list of deals for pulling those jacket to make sure that they  
3 were ready for the onsite audit?

4 A Yes, either -- or we would just tell her what deals we  
5 needed, and she would make sure they got pulled.

6 Q If there were charge backs or the results of the audit  
7 were charge backs, was she responsible for reconciling the  
8 incentive payments with the RDR sales data?

9 A No.

10 Q She wasn't responsible for reconciling the charge backs  
11 with what was sold?

12 A No, at the end of the audit, they would have a closing  
13 meeting, I would be present, Forest Housner would be present.  
14 And then we would tell Ms. Branch, I would tell her or Forest  
15 would tell her, we got a charge back \$19,000, it's coming up  
16 next month, just be aware of it. That's it. That would be  
17 her responsibility.

18 Q Then you would go into the accounting system and  
19 reconcile the line items of the books to account for those  
20 charge backs, or would Ms. Branch do that?

21 A It would just be one single entry.

22 Q Would you make that entry, or was it Ms. Branch?

23 A No -- yes, Ms. Branch would, yes.

24 Q Okay. So she sent the spreadsheet to accounting to  
25 Nissan, she pulled the files for the audit, she would have

1 been responsible for reconciling accounting if there were  
2 charge backs, and you felt that was a limited role in the  
3 audit process?

4 A That was her involvement, yes.

5 Q Who was responsible -- oh, let me back up for a second.

6 When you got the incentive payments from Nissan, did  
7 they come with notes, or was it a lump sum payment in March  
8 2013, in that time frame?

9 A I believe it was a lump sum payment.

10 Q Do you know whether they came with instructions for what  
11 that payment was for?

12 A I don't know.

13 Q Do you know who was responsible for reconciling those  
14 lump sum deposits into the dealership's bank account with what  
15 was being paid by Nissan North America for the accounting  
16 process?

17 A Well, I believe it would be -- the office would be  
18 responsible.

19 Q What office?

20 A The office that Kim Branch was in charge of.

21 Q Would it have been Ms. Branch that would have been in  
22 charge of reconciling?

23 A That I don't know.

24 Q Was it your understanding that that was her  
25 responsibility as controller was to insure that those amounts

1     were reconciled?

2     A     I would tell her exactly what money we are going to --  
3     incentive program if it wasn't related to one specific car, if  
4     it was just a bonus program, I would tell her, typically. She  
5     would send me an e-mail, did we earn any bonus money? I would  
6     send her an e-mail back saying, yes, we earned X amount, or  
7     here is what we earned. And she would make sure that we got X  
8     amount, whatever I told her we would get.

9     Q     Did you tell her that \$126,000 lump sum payment is for  
10    these 500 cars, and those 500 cars, each of those cars got  
11    these five incentives? Did you break down to her how that  
12    incentive payment was calculated for the purposes of  
13    reconciling that?

14    A     No, I did not.

15    Q     So who would have had to have done that?

16    A     I would have done that or Forest would have done that.  
17    We would have calculated how much we made. Sometimes we would  
18    e-mail our rep and say, how much did we earn in this program?  
19    Sometimes these programs get complicated. So we would say how  
20    much would we earn? They would send us an e-mail back saying,  
21    you earned this amount. We would tell Kim, set up this amount  
22    as receivable. This is the amount that they're going to pay  
23    us. I believe they would pay us in just a lump sum.

24    Q     So every day you would send her the information of how  
25    each lump sum payment was broken down -- in one quarter, if

1     there were 500 cars sold, you were the one that told her how  
2     to break down each of those lump sum payments into which cars  
3     were sold and which five incentives applied to each car, so  
4     that it can be entered into accounting?

5     A     Only once a month.

6     Q     So who would have been responsible, after you sent that  
7     once a month, for actually making every entry into the  
8     accounting required for where that money was coming from, how  
9     it had to be applied, who had to be paid, which sales  
10    representatives had to get commissions, who was responsible  
11    for financially calculating that?

12    A     Well, sales people did not get paid on the dealer  
13    incentives. That was one inventory that would be made.

14    Q     Who was responsible --

15    A     Kim Branch was responsible for making that entry.

16    Q     Let's talk about the two car dealerships, Serra Nissan  
17    and Serra Visser Nissan. Can you explain what the ownership  
18    structure was for Serra Nissan, the Birmingham store, in March  
19    2013?

20    A     Yes. Tony Serra owned 50 percent, and Kristina Visser,  
21    my wife, owned the other 50 percent.

22    Q     Who owned Serra Visser Nissan, the Cullman store in March  
23    2013?

24    A     I owned 49 percent, Tony Serra owned 49 percent, and my  
25    wife Kristina owned 2 percent.



1 Q So the ownership structures were not identical?

2 A No.

3 Q I have handed you what's been previously marked as  
4 Government's Exhibit 38 and 39. Let's start with 38.

5 A Okay.

6 Q Do you recognize that document?

7 A Yes, I do.

8 Q What is that?

9 A This is the Nissan dealer sales and service agreement.

10 Q Is that the Nissan sales and service agreement for the  
11 Birmingham Serra Nissan dealership?

12 A Yes, it is.

13 Q Can you take a moment -- I know it's a large document.  
14 Can you take a moment and review it and tell me if it's a true  
15 and accurate copy of the Birmingham stores sales and service  
16 agreement.

17 A (Witness complying.) There appears to be some other  
18 documents in there, but it does appear to be the Nissan sales  
19 and service agreement for Serra Nissan Oldsmobile.

20 Q What other documents are in there that are not part of  
21 the sales and service agreement?

22 A This is a letter from Nissan to Tony Serra and Kristina  
23 Visser about requests for relocation. That's not part of the  
24 dealer agreement. This is another letter regarding  
25 relocation.

1 Q Are they addendums, or are they letters?

2 A They're just letters. This is a shipment request, FedEx  
3 shipment request. This is a floor plan system request.

4 That's not part of the agreement. I am not sure what that's  
5 for. This is an e-mail. I don't recall what that is.

6 Q Hand me what's not part of the --

7 A Okay.

8 Q Is the rest of what you have in front of you the  
9 Birmingham store sales and service agreement with Nissan North  
10 America?

11 A These documents are not part of the agreement. I believe  
12 everything else in here is part of the agreement.

13 Q Okay.

14 MS. WICK: Your Honor, pursuant to the stipulation  
15 between the parties regarding the admissibility of this  
16 without reading it to the jury, the government would, at this  
17 time, move to admit under seal Government's Exhibit 38 because  
18 it includes proprietary information from Nissan North America.  
19 I conferred with defense counsel.

20 MR. BROOME: Judge, I don't have any objection to  
21 that. I would like to know what documents were taken out of  
22 the exhibit.

23 MS. WICK: I will show you.

24 THE COURT: Okay.

25 MS. WICK: Just one moment, Your Honor.

1 (Brief pause.)

2 THE COURT: Ms. Wick, are the documents that Mr.  
3 Visser has removed from Government's Exhibit 38, because they  
4 are not part of the sales and service agreement, are those  
5 documents that were accidentally inserted into the sales  
6 agreement?

7 MS. WICK: No, Your Honor. They were documents that  
8 Nissan North America said were part of the sales and service  
9 agreement, but this witness is saying they're not. So if he  
10 can't say they're a true and accurate copy, I can only move in  
11 what he is saying.

12 THE COURT: Okay. All right. With those documents  
13 removed then, Government's Exhibit 38 is admitted into  
14 evidence. That document is sealed because of the proprietary  
15 confidential information contained within the document.

16 BY MS. WICK:

17 Q Mr. Visser, because you removed a number of the  
18 documents, I am going to need you, for the record, and  
19 actually so that defense counsel knows, I need you to read off  
20 the ranges of the bates numbers in the bottom right-hand  
21 corner. Hopefully, they're still in kind of relatively some  
22 order.

23 A 40 through 54.

24 Q That's NNA 00040.

25 A Through NNA 00054.

1 Q What's the next range?

2 A 65 through NNA 000065 through NNA 000070. And NNA 000073  
3 through NNA 000074. And NNA 000078 through NNA 000081 and NNA  
4 000085. That's a single document. And then NNA 000087  
5 through NNA 000088.

6 MR. BROOME: Judge, we would have no objection to  
7 the introduction of the bates numbers of Exhibit 38 which Mr.  
8 Visser listed.

9 THE COURT: Okay. They've been admitted.

10 MS. WICK: Thank you, Your Honor.

11 BY MS. WICK:

12 Q Mr. Visser, at some point in time, that agreement was  
13 amended and -- I apologize. That agreement refers to standard  
14 provisions, something that Nissan issues to everyone. Can you  
15 take a look at Government's Exhibit 39, and tell me if those  
16 are the standard provisions that Nissan issues, that 38 refers  
17 to.

18 A Yes.

19 Q Okay.

20 MS. WICK: Your Honor, pursuant to the stipulation  
21 between the parties, the government would move to admit  
22 Government's Exhibit 39 under seal, as well. That document  
23 also contains proprietary Nissan information.

24 MR. BROOME: We have no objection.

25 THE COURT: Government's Exhibit 39 is admitted into

1 evidence. It is sealed because it contains proprietary  
2 information.

3 MS. WICK: Thank you, Your Honor.

4 BY MS. WICK:

5 Q Mr. Visser, did the two dealership, the Birmingham and  
6 the Cullman dealership, did they share certain functions?

7 A Yes, they did.

8 Q What functions did they share?

9 A We shared advertising, we shared inventory, we shared  
10 some accounting staff.

11 Q When you say you shared inventory, what did you mean?

12 A If a customer came to one location and we had the car at  
13 the other location, we would get that car from that location.

14 Q Did you have to dealer trade that car into the system in  
15 order to get it?

16 A Yes.

17 Q Was it your understanding that for a dealer trade, you  
18 said, if the other store had the car -- but for the dealer  
19 trade, for a car to be dealer traded to Birmingham, the  
20 customer had to buy that car at the Birmingham store?

21 A Repeat the question again. I don't understand the  
22 question.

23 Q You said, if we didn't have the car in our inventory, the  
24 car had to be dealer traded, right?

25 A Correct.

1 Q Okay. For there to be a dealer trade, let's say a dealer  
2 trade from the Cullman store to the Birmingham store?

3 A Okay.

4 Q For that to be a valid dealer trade, the customer had to  
5 actually buy that car at the Birmingham dealership, correct?

6 A If the customer came to Birmingham and the car was in  
7 Cullman, the vehicle would have to be dealer traded from  
8 Cullman to Birmingham before that customer could buy in  
9 Birmingham.

10 Q If the customer purchased the car in Cullman, and then  
11 the car was dealer traded to Birmingham and RDR'd as sold in  
12 Birmingham, is that a valid dealer trade?

13 A Well, it's a valid dealer trade, but...

14 Q Why is that a valid dealer trade?

15 A Because it got traded. A dealer trade is just  
16 transferring it from one dealership's inventory to another  
17 dealership's inventory. So it appears under that instance.  
18 It didn't get dealer traded.

19 Q Okay. I understand, I think, the confusion. I  
20 understand that there was a dealer trade that you did in the  
21 system, but under Nissan's rules, is it a valid dealer trade  
22 if the car is actually sold to a customer in Cullman, then  
23 dealer traded to Birmingham and reported as sold in Birmingham  
24 when it's already sold in Cullman?

25 A That's not a valid RDR. I mean it's still a valid dealer

1 trade. I am just trying to answer the question properly.

2 Nissan would look at that as a car sold in Cullman.

3 Q You said Nissan would look at that as a car sold in  
4 Cullman. Why?

5 A Because that's where the car was delivered in Cullman.  
6 That's where the customer signed paperwork.

7 Q To the ultimate consumer?

8 A Correct.

9 Q Under their rules?

10 A Correct.

11 Q So no, it would not be a valid dealer trade if the dealer  
12 trade was done after the car was sold to a customer in  
13 Birmingham?

14 A There's no stipulation -- a dealer trade is just going  
15 from one inventory to another. There's no rules on how a  
16 dealer trade has to be done. I mean, I don't know how to  
17 answer that question. If it was dealer traded, it was valid.  
18 It got dealer traded. Was it a valid RDR? No, it was not a  
19 valid RDR. That would have been incorrect.

20 Q Okay. So, it would have been an invalid RDR if that car  
21 was RDR'd in Birmingham, but it was sold in Cullman, and then  
22 RDR'd to Birmingham?

23 A Correct, yes.

24 Q Okay. You mentioned that the two dealerships shared an  
25 accounting function. How did they share accounting functions?

1 A We had one office that would process all the deals. So  
2 that office was located -- originally, it was located upstairs  
3 at our Volkswagen dealership, then we moved it to our Nissan  
4 dealership. But the cars that were sold in Cullman, we would  
5 have a runner every day deliver the paperwork to Birmingham to  
6 be processed.

7 Q So Ms. Branch was the controller for both Serra Visser  
8 Nissan and Serra Nissan?

9 A That's correct.

10 Q How did you keep the paperwork, the deal jackets  
11 separated?

12 A I believe they were separated by color.

13 Q Do you know which colors the dealerships used?

14 A I do not.

15 Q What functions, specifically, did Ms. Branch perform for  
16 both dealerships?

17 A She was the controller. So produce financial results to  
18 the manufacturers. I believe she reconciled bank statements.  
19 She was over training and hiring all the staff, scheduling  
20 operators. She was over the office.

21 Q Was she -- I'm sorry. I didn't mean to interrupt you if  
22 you weren't finished.

23 A No, that was it.

24 Q Was she also responsible for reconciling the incentives  
25 of both stores based on the payments that the stores received?



1 A That would be under her. I don't know if she did that  
2 personally or if she assigned that, I don't know.

3 Q She would be responsible for overseeing if anybody else  
4 did that?

5 A Correct.

6 Q Have you ever participated in a Nissan North America  
7 audit?

8 A Yes, I have.

9 Q How many audits can you remember in the last three years?

10 A The three last years? I believe we had two audits in the  
11 last three years.

12 Q Going back to 2010, you remember two audits?

13 A No, there was one year we did not get audited. I believe  
14 there was three audits in four years.

15 Q 2010, 2011, and 2013. Because you are right --

16 THE COURT: I think he said the last three years, so  
17 that would be 2012 to 2015. If you are trying to reach back  
18 further, I think you need to redefine your time frame.

19 BY MS. WICK:

20 Q Yeah, I realize my error, 2011 -- 2010, '11, '12, and '13  
21 would actual be four years. That was my mistake in the  
22 question. In the last four years, how many audits?

23 A Three audits, I believe.

24 Q Sorry. I apologize for that.

25 Okay. Were you familiar with the Nissan audit

1 process?

2 A Yes, I was.

3 Q I think earlier we talked about the request for the data,  
4 the deal jackets being pooled, and then that process in terms  
5 of Ms. Branch's involvement. So I don't want to go back over  
6 that. But do you remember if in those audits, was Nissan  
7 charged back in every audit?

8 A Yes, there was some type of charge back in every audit.

9 Q Were you present at all three closing audit meetings?

10 A Yes, I was.

11 Q I am going to show you what's been previously marked as  
12 admitted as Government's Exhibit 25. Can you take a moment  
13 and look at that document.

14 A (Witness complying.) Okay.

15 Q What is that document?

16 A This is several documents related to the audit from the  
17 period January 4th, 2012 to January 12th, 2013.

18 Q I am sorry, you said the -- you were reading, what was  
19 that, the scope of the audit period?

20 A That's the period audit, yes.

21 Q January 4 --

22 A -- 2012 to January 2nd, 2013.

23 Q When was the audit report actually prepared and sent to  
24 Serra Nissan?

25 A This letter was dated April 1st, 2013.

1 Q That would have been the date that the dealership got  
2 like the final summary report?

3 A Yes.

4 Q Who was it addressed to?

5 A Kristina of Serra Visser.

6 Q Why was it sent to her?

7 A Because she was the dealer at the time.

8 Q Do you remember who the auditor was that came to the  
9 dealership for that audit?

10 A This was Jeff Creecy.

11 Q How did the audit work? Do you remember specifically  
12 what he did in terms of the audit process?

13 A He would -- in advance, he would give us a list of the  
14 deals that he requested. We would pull those deals and put  
15 them in the conference room, and he would go through those  
16 deals and reviewed those deals, the paperwork.

17 Q Did you discuss the results of the audit with him in  
18 person?

19 A Yes, I did.

20 Q On what date?

21 A It appears it was March 15th, 2013.

22 Q What is it that you are looking at --

23 A I'm sorry. This is a closing meeting, a sales audit  
24 report.

25 Q Is that a summary of essentially the contents of the

1 meeting you had?

2 A Yes, it is.

3 Q What were the results of the audit?

4 A The dealership got a charge back of \$24,780.

5 Q Can you tell me where in the summary of his audit  
6 findings it says that it was important for you to accurately  
7 report the RDR information?

8 A Under other audit recommendations to consider -- number  
9 one, dealership should accurately report RDR all sales.

10 Q Can you tell me the page you are looking at the bottom  
11 right corner so I can follow along with you.

12 A NNA 000518.

13 MS. WICK: Your Honor, these exhibits have been  
14 admitted. May we publish it again to the jury?

15 THE COURT: Yes. This is Government's Exhibit 25  
16 page 4.

17 BY MS. WICK:

18 Q Mr. Visser, where was it you were reading?

19 A Under other audit recommendations to consider/continue,  
20 number one.

21 Q So that's what you are talking about?

22 A Yes, I am.

23 Q He would have discussed that with you?

24 A I don't know if he would have discussed this. He would  
25 have talked over most of this. I don't know if he

1 specifically said that. That's kind of a given.

2 Q Do you remember him discussing with you the importance of  
3 accurately submitting information when you RDR'd cars?

4 A Yes.

5 Q How many times do you think he mentioned that during the  
6 course of that closing meeting?

7 A Several probably. I don't recall exactly.

8 Q If you look at page 3 of that exhibit, there are a list  
9 of recommendations specific to issues noted during the audit.  
10 Without calling them out, are all six of those related to  
11 properly RDR'ing information in the system when you RDR'd  
12 cars?

13 A Yes, they are.

14 Q And being accurate when you input the information in the  
15 RDR system?

16 A Yes, they are.

17 Q Was the purpose of that so that you were given the  
18 correct incentives that you were, in fact, entitled to under  
19 Nissan's rules?

20 A Yes, that's correct.

21 Q Could you look at -- I am sorry, hold on one second --  
22 page 5 of the exhibit. In yours it is marked through the  
23 bottom of NNA 519. If you could call out that bottom  
24 paragraph NNA.

25 If you could just read that first sentence.

1 A "The importance of accurate sale reporting and the need  
2 for timely inventory and incentive, reconciliations, error  
3 corrections, and verification of correct sale type reporting  
4 for all deals was stressed."

5 Q Actually, if you could just keep reading.

6 A "The requirement that all customer cash be specifically  
7 disclosed, as such, with the amount clearly noted on the  
8 buyer's order and finance contract, as well as the retention  
9 of a completed and customer signed incentive claim form, as  
10 per Nissan C & I policy was reiterated. I stressed the  
11 accurate and timely reporting of RDR's helps to insure the  
12 monies earned are received, are not lost due to closed  
13 programs, and reminded them that any corrections to RDR's  
14 after program closure will not be manually adjusted by  
15 national or the region. Executive manager and director of  
16 operations stated that they understood the adjustments and  
17 recommendations presented and accepted the audit findings."

18 Q Who were the executive manager and director of operations  
19 that he is referring to there?

20 A That would be myself, the executive manager, and Forest  
21 Housner being the director of operations.

22 Q What did you understand that instruction to mean?

23 A Just reiterating the importance of accurate sale  
24 reporting. Report via the RDR system what is accurately sold.

25 Q That meeting, I think, you said was held on March 15th,

1 2013?

2 A That's correct.

3 Q Do you still have that exhibit?

4 A Yes.

5 Q Let me just grab that so we don't lose track of it.

6 Thank you. Let me come back to the audit date in a moment.

7 You were talking about the net profit that you and Ms. Branch

8 and I think others at the dealership are paid off, and you

9 mentioned that included incentives from Nissan North America.

10 Do you remember what incentives were, in fact, for the

11 dealership in March 2013?

12 A Yes, there was an end of the year incentive program. It

13 was a 45-day incentive program that Nissan had put on for the

14 dealership.

15 Q The big end of year push?

16 A It was a big end of the year stairstep incentive program,

17 the more you sold, the cheaper those cars would be for you.

18 They would give you a dealer discount on those vehicles.

19 Q And there was also a larger incentive payment that you

20 got for each car sold during that period?

21 A That was the incentive I was referring to. It was either

22 different levels, but you could earn up to \$700 as a dealer

23 discount, as a dealer incentive on those vehicles.

24 Q Was the time period for that incentive longer than other

25 incentives they ran?

1 A Yes, it was. Typically, their incentive programs were  
2 30-day incentives. This programs was a 45-day incentive  
3 program.

4 Q I am handing you what's been previously marked as  
5 Government's Exhibit 41. Can you tell me if you recognize  
6 that?

7 A Yes. This is an e-mail that I sent to Abdul, the general  
8 sales manager on March 25th, 2013.

9 Q And is that a true and accurate copy of the e-mail that  
10 you sent to Mr. Mughal?

11 A Yes, it is.

12 MS. WICK: At this time, the government would move  
13 to admit Government's Exhibit 41.

14 MR. BROOME: We have no objection, Your Honor.

15 THE COURT: It's admitted.

16 MS. WICK: Permission to publish, Your Honor.

17 THE COURT: Granted.

18 BY MS. WICK:

19 Q Mr. Visser, who were you e-mailing here?

20 A Abdul Mughal. He was the general sales manager at the  
21 time.

22 Q What did you tell him?

23 A I told him that we need 46 Nissans.

24 Q What was that in reference to?

25 A That was in reference to hitting our objective for the



1 45-day incentive program.

2 Q So is it fair to say that your understanding was that as  
3 of March 25th, you are 46 cars away from hitting the top level  
4 two tier objective?

5 A That's correct.

6 Q Nissan sent you regular updates, didn't they?

7 A Yes, they did.

8 Q Do you remember what those were called?

9 A I don't recall what they called them.

10 THE COURT: Updates on what, please, Ms. Wick?

11 BY MS. WICK:

12 Q Oh, I'm sorry. I apologize.

13 Let me just show you. It would be a lot easier. Hold  
14 on one second. Let me swap that out.

15 If you could take a look at Government's Exhibit 44,  
16 this has already been admitted. Do you recognize those?

17 A Yes, I do.

18 Q What are those?

19 A They call this the retro tracker, so it shows you how  
20 many Nissans you are away from -- or new cars you are away  
21 from hitting your objectives.

22 Q Can you tell me if you recognize those specific retro  
23 trackers?

24 A Yes.

25 Q When were they from?

1 A There were several here. This one is from March 15th,  
2 2013, March 19, 2013.

3 Q I'll tell you what, are those the March 2013 retro  
4 trackers for the DVB program?

5 A Yes, they are.

6 Q Those are the retro trackers for Serra Nissan and Serra  
7 Visser Nissan?

8 A Yes, they are.

9 Q So the Birmingham and Cullman store retro trackers are in  
10 there?

11 A Yes.

12 Q Did you receive both stores' retro trackers from Nissan?

13 A Yes, I did.

14 Q What did you use those for?

15 A We would just review them. I would review about every  
16 third one just to see if our numbers matched up with Nissan  
17 set we had.

18 Q At some point, did you realize that Serra Nissan was not  
19 going to hit the highest incentive mark in March 2013?

20 A Yes, I did.

21 Q What did you do at that point?

22 A I instructed -- I typed out a set of instructions to -- I  
23 realized that Serra Visser Nissan was going to be over their  
24 objective, so I instructed them to -- Forest to stop reporting  
25 cars in Cullman and start reporting those cars at Serra Nissan

1 in Birmingham.

2 Q Let me trade that out with you. I am handing you two  
3 exhibits. Let's start with what's been previously identified  
4 as Government's Exhibit 40. And actually, I apologize, I did  
5 that in reverse.

6 Let's start with Government's Exhibit 43. A moment  
7 ago, I think you said you typed out a list of instructions.  
8 Is that your list of instructions that you were referring to?

9 A Yes, it is.

10 Q Is that an e-mail that you actually sent?

11 A I don't recall it. I have looked for this e-mail, I  
12 could not find it. I thought I actually e-mailed it. I went  
13 back and looked through my e-mails, I did not find it. But  
14 then I do have -- I did see the letter that was printed out.

15 Q So is it possible that you typed that in like your  
16 drafts, copied it, and then put it on different paper?

17 A Yes.

18 Q And if that was the case, that draft would still be in  
19 your e-mails, just not in the sent folder?

20 A Yes.

21 Q Can you take a look at Government's Exhibit 43, which is  
22 the e-mail form, and take a look at Government's Exhibit 40,  
23 and tell me if those are identical in terms of the substance  
24 of the instructions.

25 A Yes, they are. I believe they are identical.

1 Q Okay. Let me take 43 back from you. Turning to  
2 Government's Exhibit 40, is that the instructions that you  
3 were referring to?

4 A Yes, it is.

5 Q And what format is that in?

6 A I believe this would have been Word format. Microsoft  
7 Word.

8 Q And how did you -- well, let me back up for a second.

9 Is that an e-mail, a letter, a fax, what's the format  
10 of that?

11 A This appears to be a fax received and printed out.

12 Q Do you recognize that as the substance of the  
13 information; when you say, I gave instructions, are those the  
14 instructions that you gave?

15 A These are the instructions.

16 MS. WICK: Your Honor, at this time, the government  
17 would move to admit Government's Exhibit 43?

18 MR. BROOME: We have no objection.

19 THE COURT: It's admitted.

20 MS. WICK: I apologize, Your Honor.

21 THE COURT: You want 40?

22 MS. WICK: I did. I am sorry, 40.

23 THE COURT: Government's Exhibit 40 is admitted into  
24 evidence.

25 MR. BROOME: I have no objection to that one either.

1 MS. WICK: One moment, Your Honor, I apologize.

2 Your Honor, permission to approach the bench?

3 THE COURT: Yes.

4 (Ms. Wick retrieving the document.)

5 BY MS. WICK:

6 Q Mr. Visser, does that document have two pages?

7 A Yes, it does.

8 Q Okay. Do you actually recognize what's on the second  
9 page?

10 A No.

11 Q So let's focus on the first page. The first page is your  
12 instructions?

13 A That's correct.

14 MS. WICK: I believe this has been admitted. Your  
15 Honor, may we have permission to publish just the first page  
16 of Government's Exhibit 40?

17 THE COURT: Yes.

18 BY MS. WICK:

19 Q If we could just call out the top half, the text. Can  
20 you get all of the text in that top number?

21 Mr. Visser, do you recognize the (256) number at the  
22 top of that?

23 A I do not recognize that number.

24 Q Do you recognize the handwriting?

25 A I believe that to be Forest Housner.

1 Q Do you recognize the handwriting of the 700?

2 A That's my handwriting.

3 Q Can you read the first paragraph of that to the jury.

4 A "Birmingham store is 41 away from their objective. Since  
5 Cullman hit theirs already, we need to sell and RDR all  
6 remaining Nissans for the month under the Birmingham store.  
7 Cullman will get credit for the gross, plus Cullman will get  
8 another \$500 per deal for handling, but the RDR needs to go to  
9 Birmingham. Go ahead and contract the customer as you  
10 normally would, but tell the customer we will FedEx the bill  
11 of sale and title application to them. Very important. Tell  
12 the customer the title application system is down and we will  
13 overnight the paperwork. They need to get a tag. Do not tell  
14 them we are shifting sales."

15 Q Let me stop you there. You said you typed these up. Did  
16 you also fax this to the Cullman store?

17 A I did not fax this, no.

18 Q Do you know who did fax it?

19 A I don't know.

20 Q Do you know what that 700 number is in reference to?

21 A That's the top tier that we would earn as a dealer  
22 discount. The cars, we would get a \$700 discount on the car  
23 if we hit our top tier.

24 Q I think you do not recognize the (256) number, is that  
25 what you said?

1 A I do not recognize that number, no.

2 Q Can you explain, "Cullman will get credit for the gross,  
3 and Cullman will get another \$500 per deal for handling. But  
4 the RDR needs to go to Birmingham." Can you explain what that  
5 meant?

6 A That meant that the managers in Cullman would get paid an  
7 extra \$500, not personally, but \$500 would count to gross for  
8 their pay and -- but got RDR'd in Birmingham.

9 Q So at this time when you sent this, is it fair to say  
10 that it was some time near the end of the incentive period,  
11 but it hadn't ended yet?

12 A That's correct.

13 Q Okay. Because at this point you are 41 away from your  
14 objective?

15 A That's correct.

16 Q I think the e-mail that you looked at a moment before  
17 that you sent Mr. Mughal that we were talking about on March  
18 25th said that you needed 46?

19 A That's correct.

20 Q So is it fair to say that this fax was sent some time  
21 after March 25th, 2013, but prior to the end of the incentive  
22 period on April 1st, 2015; is that correct?

23 A I believe that would be correct, yes.

24 Q So you realize that you are 41 away, Cullman -- when you  
25 say Cullman hit theirs already, do you mean their highest tier

1 two objective?

2 A Yes. They hit their highest objective.

3 Q So the plan was now all cars that you sell in Cullman  
4 were going to RDR in Birmingham?

5 A That's correct.

6 Q So you knew when you sent this that those vehicles that  
7 you were going to RDR in Birmingham would actually be sold at  
8 the Cullman store, just RDR'd in Birmingham?

9 A Yes, I did.

10 Q "So tell the customer we will FedEx the bill of sale and  
11 title application. We will overnight the paperwork. Don't  
12 tell them we're shifting sales." Why was this important to  
13 give that instruction?

14 A I didn't want the customers involved in it. I didn't  
15 want to explain it to them. I thought it confused them. I  
16 just didn't think that that was important to them.

17 Q Was it a normal process for them to not make bill of  
18 sales and title applications for the cars they sold in  
19 Cullman?

20 A Was it normal to not?

21 Q Meaning like if a car was sold at the Cullman dealership,  
22 was it part of the normal process that the Cullman guys would  
23 make the bill of sale and title application?

24 A Yes, it would be part of that, yes.

25 Q When you said, "do not tell them we are shifting sales,"



1 what did you mean by shifting sales?

2 A Shifting sales from Cullman to Birmingham.

3 Q Okay. So could you read, "so here is the process"?

4 A "So here is the process, one, Cullman will contract  
5 customers as they normally would with the exception: Do not  
6 print the bill of sale and title application. Two, next day,  
7 Center Point finance managers, print out the bill of sale, and  
8 title application, and those will be overnighted back to the  
9 customer. Three, the bill of sale and title app will be added  
10 to the deal when the deal comes across from Cullman. The deal  
11 will be booked into Nissan Birmingham accounting. This is  
12 important. In audits, Nissan pulls the sales directly from  
13 Reynolds. So the sales must be booked into Reynolds for  
14 Birmingham."

15 Q Let's go back to the beginning of that. Why was it  
16 important that they not print the bill of sale or title  
17 application in Cullman?

18 A Because I was going to have a bill of sale and title  
19 application printed at Birmingham.

20 Q I think, is it the bill of sale, those were preprinted  
21 with your store number on it, wasn't it?

22 A Yes.

23 Q Okay.

24 A Store name.

25 Q The store name. Sorry.

1 A Yes.

2 Q And that bill of sale would have to say the Birmingham  
3 dealership if Nissan audited?

4 A That's correct.

5 Q And the title application, similarly, that had to be made  
6 in Birmingham otherwise Nissan would immediately see that  
7 those deals were sold in Cullman?

8 A That's correct.

9 Q When you say the Center Point finance managers, who were  
10 you referring to?

11 A The finance managers that worked at the Center Point  
12 location. The Serra Nissan in Center Point.

13 Q The Birmingham?

14 A The Birmingham location, yes.

15 Q In number three, it says, "the bill of sale and title app  
16 will be added to the deal when the deal comes over from  
17 Cullman."

18 Was it your understanding that those fake Birmingham  
19 bill of sale and title applications would just be stuck in the  
20 Cullman deal jacket, or would they have to make a new  
21 Birmingham deal jacket to put them into?

22 A Well, they would be stuck in a deal jacket that looks  
23 similar to this (indicating). This would be taken to  
24 accounting. Accounting would see that it's a Birmingham deal,  
25 because it would be a Birmingham bill of sale, and just book

1 it as a Birmingham sale, and file it as a Birmingham sale.

2 That was my intention.

3 Q So was it your understanding when you drafted these  
4 instructions that they would have to create two separate deal  
5 jackets -- the original in Cullman and a new one in  
6 Birmingham?

7 A No, that wasn't my original instructions, no.

8 Q Okay. When it says, "the deal will be booked into Nissan  
9 Birmingham accounting. This is important." Why was it  
10 important that they be booked into Nissan Birmingham  
11 accounting?

12 A Because in my mind, if we have Nissan Birmingham bill of  
13 sale and they were booked in the Nissan Birmingham accounting,  
14 that was a Nissan Birmingham deal. That's why I wanted them  
15 booked in accounting in Birmingham.

16 Q I don't understand. Maybe explain what you mean. Did  
17 you think that it made it a Birmingham deal if it was -- if  
18 you just booked it into accounting in Birmingham? I don't  
19 understand what you are saying.

20 A In my mind, that would have passed an audit.

21 Q Okay. So if it was booked into accounting in Birmingham,  
22 and that information was submitted to Nissan, it had to match?

23 A That's correct.

24 Q So the purpose of booking it into Nissan Birmingham  
25 accounting was so that when the controller submitted that

1 information, what we were talking about earlier, the  
2 accounting information in step one of the audit, it would have  
3 to say that car was sold in Birmingham for you to get the  
4 incentive?

5 A Right.

6 Q Okay. In fact, I think your next sentence says, "In  
7 audits, Nissan pulls the sales directly from Reynolds. So the  
8 sale must be booked directly into Reynolds for Birmingham."  
9 So I think that's explaining what you just said, right?

10 A That's correct.

11 Q Can you read the last part?

12 A "It's very important that they get the title application  
13 from Birmingham, as Nissan checks the registrations against  
14 what we RDR. So any discrepancy here would be a problem."

15 Q Okay. Are you referring there to the preliminary part  
16 where when Nissan checks the RDR data to registration data,  
17 their initial kind of red flag check?

18 A Yes.

19 Q Okay. So by creating those fake title applications, the  
20 hope was that this will keep it off their radar in step one?

21 A That's correct.

22 Q Let me take that back. I am handing you what's been  
23 previously marked as Government's Exhibit 42. Do you  
24 recognize that document?

25 A Yes.

1 Q Oh -- just one second. Off the top of your head, do you  
2 happen to remember where that fax was sent from and to where?

3 A I don't know.

4 Q By that I mean, was it sent from the Birmingham store to  
5 the Cullman store?

6 A I assume it would have been. I don't know.

7 Q Okay. The document you have in front of you is, I  
8 believe, Government's Exhibit 42?

9 A Yes, that's correct.

10 Q What is 42?

11 A 42 is copy of an e-mail that I sent to Greg Boyles, who  
12 would have been the general sales manager in Cullman. And  
13 this was in reference to a program called Nissan Put Out For  
14 Managers called the Lot a Loot tracker update.

15 Q What was the date of that e-mail?

16 A March 26th, 2013.

17 Q Is that a true and accurate copy of the e-mail you sent  
18 to Mr. Boyles on that date?

19 A Yes, it is.

20 MS. WICK: Your Honor, at this time, the government  
21 would move to admit Government's Exhibit 42.

22 MR. BROOME: We do not have any objection.

23 THE COURT: It's admitted.

24 MS. WICK: Permission to publish?

25 THE COURT: Granted.

1 BY MS. WICK:

2 Q So a minute ago you said it was in regards to the Lot a  
3 Loot program?

4 A That's correct.

5 Q What was that?

6 A I believe this was a program that Nissan -- it was a hit  
7 and win program. If you scored the highest number of points  
8 in a Ford dealership group, that you would win some kind of  
9 competition.

10 Q So who was it an incentive for?

11 A The managers of the store.

12 Q The sales manager?

13 A The sales managers, yes.

14 Q And you said a moment ago Mr. Boyles was the sales  
15 manager of which store?

16 A The Cullman store.

17 Q So let me call out the top part of the actual e-mail from  
18 you to Mr. Boyles. What did you e-mail him on March 26th?

19 A I said, "If this costs you guys the Lot a Loot contest,  
20 Nissan Birmingham will make it up to you."

21 Q What were you referring to when you said, "If this costs  
22 you..."?

23 A If shifting the sales from Cullman to Birmingham.

24 Q Because what would Mr. Boyles have gotten if he got to  
25 keep the deals or actually RDR the deals in Cullman that they

1 were actually selling?

2 A Well, he may have won the competition.

3 Q What was it?

4 A I don't know. Actually, I don't know what the  
5 competition is.

6 Q Can you read what's on the paperwork?

7 A It just said, "this is a fantastic program." I don't  
8 know the details of the competition. It was a cash bonus and  
9 some other things. I don't know exactly.

10 Q Can we call out the e-mail underneath it? No, no, no,  
11 from the e-mail from where it says from Patrick Byrnes down to  
12 standings. Okay.

13 This e-mail that you forwarded, where it says, "please  
14 find attached the updated SER Lotta Loot tracker," where it  
15 says, "let's make sure your dealership is striving to hit the  
16 ultimate road bonus points, which could be the deciding factor  
17 on which dealers are in Vegas." Did that incentive have  
18 something to do with a trip to Vegas?

19 A I believe it does. I found the trip award. It was three  
20 nights -- three days, two nights accommodation as the Cosmo in  
21 Las Vegas.

22 Q So that's what he would have lost that you were referring  
23 to?

24 A Yes.

25 Q Mr. Visser, why did you type out the instructions in that

1 fax and send it to Cullman like that?

2 A I typed them out and handed them to Forest. I didn't  
3 type them out. I don't recall. I thought I e-mailed them,  
4 but I looked back, and I didn't e-mail them. I just typed  
5 them out.

6 Q You gave them to who?

7 A Forest.

8 Q To do what?

9 A To execute these instructions.

10 Q Was it your understanding that he was going to have to  
11 send that to Cullman?

12 A Yes.

13 Q Was the audience of that fax, in terms of who had to  
14 follow those instructions, the people in Cullman?

15 A Yes, but also some people in Birmingham, the finance  
16 managers, everybody involved in that letter that I called out.

17 Q And it was your understanding that Mr. Housner would be  
18 responsible for kind of disseminating the instructions?

19 A Correct.

20 Q Mr. Visser, I am handing you what has been previously  
21 marked as Government's Exhibit 24. Do you recognize page 1 of  
22 that document?

23 A Page 1, I don't recognize page 1.

24 Q Do you recognize page 2 of the document?

25 A Yes, I do.



1 Q What is page 2 of the document?

2 A This is three e-mails that were exchanged between -- sent  
3 by me, sent to Forest Housner and Kim Branch. And this is a  
4 chain of e-mails.

5 MS. WICK: One moment, Your Honor.

6 BY MS. WICK:

7 Q Mr. Visser, would you -- hold on just one moment.

8 MS. WICK: Your Honor, at this time, the parties  
9 would like to read into the record one of the stipulations  
10 with the Court's permission.

11 THE COURT: Mr. Broome?

12 MR. BROOME: That's fine, Your Honor.

13 THE COURT: Please go ahead.

14 MS. WICK: Do you want it -- I don't if you want to  
15 give an instruction, or I can just read it. Whatever the  
16 Court would prefer.

17 THE COURT: Sorry. Let me grab the stipulations.

18 For the members of the jury, the parties in advance of  
19 trial have agreed to certain facts, and those facts are  
20 recorded in a document that are called the stipulation of the  
21 parties. When those stipulations are relevant to a particular  
22 witness's testimony, the parties have agreed that the  
23 stipulation that is relevant to that witness's testimony will  
24 be read into the record.

25 So Ms. Wick has indicated that there is a stipulation

1 that is relevant to Mr. Visser's testimony. So that  
2 stipulation will be presented to you now.

3 MS. WICK: Thank you, Your Honor. Stipulation  
4 Number Three, the documents identified as Government's Exhibit  
5 24 were found on the defendant, Kimberly H. Branch's desk  
6 during the execution of a search warrant at Serra Nissan.

7 BY MS. WICK:

8 Q Mr. Visser, in regards to page 2 of that document, you  
9 said you recognized that. What is that document?

10 A Page 2, I don't recognize the document. I have seen it.  
11 You have shown it to me before, but...

12 Q Page 2 is what you are looking at?

13 A Oh, I am sorry. I am sorry. Wrong page. Yes. This was  
14 an e-mail, string of e-mails that I sent on June 1st to Forest  
15 and to Kim.

16 Q Take a look at the three e-mails, and tell me if those  
17 are true and accurate copies of the e-mails that you exchanged  
18 during that time period?

19 A Yes, they are.

20 MS. WICK: Your Honor, at this time, pursuant to the  
21 stipulations and Mr. Visser's testimony, the government would  
22 move to admit Government's Exhibit 24.

23 MR. BROOME: We have no objection, Your Honor.

24 THE COURT: It's admitted.

25 MS. WICK: If we could publish the first page. If

1 we could just call up the top half.

2 BY MS. WICK:

3 Q Okay. Mr. Visser, a moment ago I asked you had you ever  
4 seen this first page prior to the government showing it to  
5 you?

6 A No, I have not.

7 Q Okay. Let me turn to the second page that you could  
8 identify.

9 Mr. Visser, because of how small it is, let's just  
10 start with the earliest e-mail, the top one on June 1st, 2013.  
11 If we could call that one out. Can you read the e-mail you  
12 sent on June 1st, 2013?

13 A "When Birmingham missed their objective two months ago  
14 and we used Cullman sales, did we book these units in Reynolds  
15 accounting under Birmingham? I just wanted to make sure we  
16 did. When Nissan audits us, they get a log of every deal  
17 booked in Reynolds."

18 Q Who did you send this e-mail to?

19 A To Forest and to Kim.

20 Q Okay. In the first sentence, when you say, "when  
21 Birmingham missed their objective two months ago and we used  
22 Cullman sales," did you assume that they both knew about that  
23 when you sent this e-mail?

24 A Yes.

25 MR. BROOME: Judge, I am sorry, I hate to interpose

1 an objection, but what he assumed what somebody else thought,  
2 we would object to that, Your Honor.

3 THE COURT: Well, I think the question is just what  
4 did Mr. Visser assume. It doesn't mean that somebody else  
5 actually had the knowledge.

6 MR. BROOME: We concede these e-mails were sent to  
7 these folks.

8 THE COURT: Right. And I believe Mr. Visser is  
9 testifying to what his thought process was. I don't think he  
10 is testifying to what anyone else's actual knowledge was.

11 MR. BROOME: Then I would withdraw the objection, if  
12 that's what he is going to testify.

13 THE COURT: Is that correct, Ms. Wick?

14 MS. WICK: Yes, and I can rephrase in terms of --  
15 BY MS. WICK:

16 Q Mr. Visser, what was your understanding of when you  
17 wrote, "when Birmingham missed their objective two months ago  
18 and we used Cullman sales," was it your understanding that the  
19 two people you sent this to already knew what you were  
20 referring to?

21 A Yes.

22 Q Okay.

23 MS. WICK: Does that clarify that?

24 MR. BROOME: Yes, that's fine, Your Honor.

25 BY MS. WICK:

1 Q So then you said, "Did we book these units in Reynolds  
2 accounting under Birmingham?" Who were you addressing that  
3 question to?

4 A Both of them.

5 Q Who would have been responsible for booking those units  
6 in Reynolds accounting under Birmingham?

7 A Kim would have been over that.

8 Q You said, "I just wanted to make sure we did. When  
9 Nissan audits us, they get a log of every deal booked in  
10 Reynolds." When you referred to the log, what are you  
11 referring to there?

12 A The Excel spreadsheet that I talked about earlier.

13 Q If we could call up the second e-mail in the middle.  
14 What was Mrs. Branch's response to you two days later?

15 A Would you like me to read it?

16 Q Yes, please.

17 A "These deals were not booked in accounting, but I have  
18 list of these deals and can manually add them to any report  
19 that Nissan requires. Jeff also created a Birmingham deal  
20 jacket for each of these deals so we would have it if they  
21 ever request the deal to be pulled."

22 Q So your instructions were that the deals be booked in  
23 accounting in Birmingham. Did she follow those instructions?

24 A It does not appear those instructions were followed.

25 Q Okay. When she says, "but I have a list of these deals

1 and can manually add them to any report that Nissan requires,"  
2 do you know if that's the list that was attached to those  
3 e-mails, the first page? Is that the list she is referring  
4 to?

5 A I believe it is.

6 Q Okay. Why would she need to manually add them,  
7 functionally, if you know, based on the audit process -- I am  
8 not asking you to read her mind, I am say functionally -- why  
9 would she need to manually add them to any report that Nissan  
10 requires?

11 A My next e-mail speaks to that because if they audit it,  
12 those customers need to be in that Excel file. Otherwise...

13 Q Let me call that one out. If you could call out the  
14 third e-mail.

15 This is the e-mail you responded, I think, on July  
16 27th?

17 A Yes.

18 Q You said -- go ahead and read that one.

19 A "Okay. Just manually add them or manually remove them if  
20 they audit Cullman when they do the next audit. In Alabama,  
21 the factory has 12 months from date the incentive was paid to  
22 conduct an audit."

23 Q So when she said, "but I have a list of these deals and  
24 can manually add them to any report that Nissan requires," and  
25 you say, "okay, just manually add them or remove them," you

1 are specifically talking about how to hide it during the  
2 Nissan audit?

3 A Yes.

4 Q Okay. Let me go back to the middle e-mail. I think in  
5 the fax that we talked about earlier, it said something to the  
6 effect of the bills of sale and the title applications going  
7 into the Cullman jackets. And I asked you did you know that  
8 two deal jackets would have to be created. You said no?

9 A That's correct.

10 Q So where she wrote to you, "Jeff also created a  
11 Birmingham deal jacket for each of these deals so we would  
12 have it if they ever request the deal to be pulled." Was that  
13 part of your initial instructions?

14 A No.

15 Q Did you know that that had been done prior to this  
16 e-mail?

17 A No.

18 Q Okay. Was it a common practice for the dealership to  
19 make two sets of deal jackets for one car sale?

20 A No.

21 Q If we could go back to the third e-mail. We talked about  
22 the manually adding and removing if you got audited. But  
23 where you write, "in Alabama the factory has 12 months from  
24 the date the incentive was paid to conduct on audit." What  
25 were you referring to there?

1 A I was referring to the Alabama dealer franchise law.

2 Q Which says, what, to your knowledge?

3 A Which says that the factories have 12 months to audit you  
4 for incentives paid.

5 Q So that was the scope in which Nissan could essentially  
6 catch this?

7 A Correct.

8 Q So you would have had -- I want to make sure I have this  
9 right.

10 If the cars had to be sold, I think you said March  
11 31st or April 1st, 2013, you would have had until March 31st  
12 or April 1st, 2014, for Nissan to essentially catch this?

13 A Not necessarily. It's from when they were paid, not when  
14 they were sold.

15 Q Okay. So --

16 A So when Nissan actually paid the money.

17 Q Okay. Let me show you what's been previously marked as  
18 Government's Exhibit 17. Hold on to that other exhibit.

19 Do you recognize Government's Exhibit 17?

20 A Yes.

21 Q What is that?

22 A It's a bank statement from April of 2013.

23 Q Is that one of the accounts that Serra Nissan had?

24 A Yes.

25 Q For that account, for that statement period, is it a true



1 and accurate copy of the bank statement?

2 A I believe it is.

3 MS. WICK: Your Honor, at this time, the government  
4 would move to admit Government's Exhibit 17.

5 MR. BROOME: We have no objection.

6 THE COURT: It's admitted.

7 MS. WICK: Permission to publish, Your Honor?

8 THE COURT: Granted.

9 BY MS. WICK:

10 Q If we could call out at the very bottom just the chunk  
11 under that -- that's perfect.

12 Okay. So can you tell me what the time period for  
13 this bank statement is?

14 A It just says statement date, April 30th, 2013. This page  
15 appears to be from April 5th to April 10th, 2013.

16 Q The section that I called out, what is that \$175,450  
17 payment on April 10th?

18 A That's an incentive payment that Nissan paid the  
19 dealership.

20 Q Would that have included the March DVB bonuses?

21 A I believe it would have.

22 Q So based on what you said a moment ago, if it was  
23 deposited on April 10th, 2013, Nissan would have had until  
24 April 10, 2014, to catch it during an audit?

25 A That's correct. That's my understanding.

1 Q Okay. Let me take that. Thank you.

2 If you could go back to Government's Exhibit 24, page  
3 2, please. If we could call out e-mail one again.

4 Mr. Visser, the top e-mail that you sent on June 1st,  
5 when you referred to, "did we book these unit in Reynolds  
6 accounting under Birmingham," what is the Reynolds accounting  
7 you are referring to?

8 A That's the dealership software. That is our accounting  
9 software.

10 Q Is that the accounting software that you would have had  
11 to use to import the Excel data to Nissan?

12 A Yes.

13 Q Does that information get submitted to Nissan  
14 automatically?

15 A No.

16 Q It has to be manually sent to them?

17 A For an audit, yes.

18 Q In terms of her second e-mail where she references that,  
19 "Jeff also created a Birmingham deal jacket for each of these  
20 deals, so we would have it if they ever requested the deal to  
21 be pulled..." When you got that e-mail and became aware, what  
22 did you understand her to mean by that?

23 A Just exactly that, that there was a Birmingham deal  
24 jacket created for these deals.

25 Q For what purpose?

1 A In the event of an audit. We would pass an audit.

2 Q The third stage where they come on site and actually look  
3 at the deal jackets?

4 A Correct.

5 Q So it was your understanding that those Birmingham deal  
6 jackets that they created would be what was given to Nissan if  
7 they came to do an on site audit, not the Cullman deal  
8 jackets?

9 A Correct.

10 Q Did you discuss with Ms. Branch the purpose of creating  
11 the Birmingham deal jackets?

12 A No.

13 Q Did you have any discussions with Ms. Branch other than  
14 these e-mails about the process or how things are going to be  
15 done?

16 A No.

17 MS. WICK: Your Honor, there are a number of  
18 questions and exhibits for this witness, and I don't know if  
19 we're at stopping point, if you wanted to release the jury for  
20 lunch. I just kind of didn't want to keep rolling on if you  
21 wanted to break around noon, because this is kind of a natural  
22 breaking point.

23 THE COURT: How do y'all feel? Do you want to keep  
24 going for a little bit, or would you all prefer to take a  
25 lunch break now? You are the boss.

1 ALL JURORS: Lunch break.

2 THE COURT: All right. Let's come back at one  
3 o'clock, please. If you will come back to the jury room. I  
4 will see everybody at 1:00.

5 MS. WICK: Your Honor, I apologize for the  
6 inconvenience, but because of the way we broke, would you mind  
7 if the witness receives an instruction not to discuss with  
8 anyone the contents of his testimony during the lunch break?

9 THE COURT: Yes. As Ms. Wick said, please not to  
10 discuss the contents of any of the testimony that has gone on,  
11 any of the questions that have been presented, or your  
12 responses to any of those questions. Thank you.

13 MS. WICK: Thank you, Your Honor.

14 (Luncheon recess at noon.)

15 (In open court at 1:00 p.m. Jury not present.)

16 (The following proceedings were held at the bench:)

17 THE COURT: Tammi brought to my attention that as  
18 you were walking out of the juror room to go to lunch, you saw  
19 Mr. Visser's attorney. Is that correct?

20 JUROR LAZENBY: Mr. David McKnight, his attorney, I  
21 did.

22 THE COURT: Do you know Mr. McKnight?

23 JUROR LAZENBY: We went to church together, probably  
24 25, 35 years ago.

25 THE COURT: Did you greet him?

1 JUROR LAZENBY: I did. I said, how you doing?

2 THE COURT: Did y'all talk about the case at all?

3 JUROR LAZENBY: No. The only thing we talked about,  
4 he said, how are your kids? I said fine. And then he said,  
5 you know, we don't need to be talking, and I said, fine.

6 THE COURT: Okay. My fault, I told you and all the  
7 jurors that I was going to remind you every time we took a  
8 break not to discuss the case.

9 JUROR LAZENBY: Well, no, I didn't even think about  
10 it.

11 THE COURT: I failed on my responsibilities there.  
12 You all need to remind me when I forget to tell you because I  
13 know you remember. But unless anybody has a concern about  
14 that, that sounds completely innocuous to the Court.

15 MS. WICK: No concerns from the government, Your  
16 Honor.

17 MR. BROOME: We do not, Your Honor.

18 THE COURT: It's important for us when there could  
19 potentially be any question to put it on the record.

20 JUROR LAZENBY: Well, that's why I came back here.

21 THE COURT: Thank you so much for letting Tammi know  
22 what happened, and I appreciate it. We're ready to get  
23 started, I think.

24 JUROR LAZENBY: Okay.

25 THE COURT: Thanks.

1 (Conclusion of bench conference.)

2 (In open court. Jury present at 1:15 p.m.)

3 THE COURT: Ms. Wick, I believe you have the floor.

4 Mr. Visser, please take the witness stand again. You  
5 are still under oath.

6 MS. WICK: Your Honor, I apologize. The government  
7 needed to file the stipulations.

8 THE COURT: Go ahead. Please proceed.

9 MS. WICK: Thank you, Your Honor.

10 BY MS. WICK:

11 Q Mr. Visser, right before the lunch break, we were talking  
12 about, I think, a number of e-mails that you had exchanged  
13 with Ms. Branch in June 2013. I would like to show you what's  
14 been previously marked as Government's Exhibit 19. Can you  
15 take a look at that document and tell me if you know what it  
16 is.

17 A (Witness complying.) This is a check from Serra Nissan  
18 Volkswagen paid to Serra Visser Nissan.

19 Q When?

20 A Dated June 5th, 2013.

21 Q Is it a true and accurate copy of that check?

22 A I believe it is.

23 MS. WICK: Your Honor, at this time, the government  
24 would move to admit Government's Exhibit 19.

25 MR. BROOME: We have no objection, Your Honor.

1 THE COURT: It's admitted.

2 BY MS. WICK:

3 Q Mr. Visser, what was -- permission to publish?

4 THE COURT: Granted.

5 BY MS. WICK:

6 Q If we could call up the top check portion.

7 So I think you said that was a check from Serra Nissan  
8 to who?

9 A To Serra Visser Nissan.

10 Q So they had separate bank accounts?

11 A Correct.

12 Q And that \$19,950, can you tell what that payment was for?

13 A Not by looking at this check, but I believe it to be  
14 customer incentive money.

15 Q Let me call out -- if we could out the bottom half.

16 Mr. Visser, does that bottom part of the check -- I  
17 think you started to say you can't tell from the check. Can  
18 you tell from that portion what that payment is for?

19 A I believe it to be customer incentive money that was paid  
20 to Serra Nissan that was for cars sold at Serra Visser Nissan.

21 Q Okay. So is it your understanding that this check is for  
22 -- in any way related to the 15 deals at issue in this case?

23 A I assume it to be.

24 Q So this included at least some portion, if not all of the  
25 incentive money for the 15 deals that we've been talking

1 about?

2 A I believe it's just the customer incentive portion, not  
3 the dealer incentive.

4 Q Where it says created by, who is Kim B?

5 A That's Kim Branch.

6 Q That marked, does that come when somebody -- is that in  
7 your system when somebody creates these checks?

8 A I believe that's her log in to the Reynolds system.

9 Q What is the last six for vin of March incentive money?

10 A The last six of vin is how the customer incentives are  
11 kept up with. So, for instance, the first one is 019010, that  
12 would be the vin number for that vehicle.

13 Q Was it a common practice for Serra Nissan Birmingham to  
14 have to pay Serra Visser Nissan for any incentive?

15 A No.

16 Q Let me take that from you.

17 At some point in time, did you become aware that the  
18 dealership at Serra Nissan had received a subpoena from the  
19 grand jury in the Northern District of Alabama regarding the  
20 15 deals at issue in this case, yes?

21 A Yes, I did.

22 MS. WICK: Your Honor, at this point in time, the  
23 government would like to read one of the stipulations on the  
24 government's -- the parties' additional stipulations list that  
25 was filed, specifically, stipulation one.



1 THE COURT: All right. Please go ahead.

2 MS. WICK: Government's Exhibit 45 is a grand jury  
3 subpoena issued by the grand jury of the Northern District of  
4 Alabama on June 16, 2014. And actually, could we read  
5 Stipulation Two, as well?

6 THE COURT: You may.

7 MS. WICK: Government's Exhibit 45 was served on  
8 counsel for Serra Nissan on June 17th, 2014.

9 BY MS. WICK:

10 Q Mr. Visser, could you take a look at Government's Exhibit  
11 45 and tell me, have you ever seen that document before?

12 A Not before you showed it to me, no.

13 Q Take a look at the dates and the contents and tell me if  
14 the content of that is the subpoena that you were aware of in  
15 June 2014?

16 A Yes, I believe this is the subpoena.

17 MS. WICK: Your Honor, pursuant to the stipulations  
18 between the parties, we would move to admit Government's  
19 Exhibit 45 at this time.

20 MR. BROOME: We have no objection.

21 THE COURT: It's admitted.

22 MR. BROOME: Your Honor, can we just clarify one  
23 thing that was in that stipulation? It says that it was  
24 served on counsel. That's not me. That would be the counsel  
25 for the dealership.

1           THE COURT: All right. And is the government going  
2 to make sure it serves a copy of the stipulations on counsel  
3 for the dealership?

4           MS. WICK: Oh, yes. I'm sorry, yes, Your Honor.

5           THE COURT: Because you just filed them in court, I  
6 assume you will follow up on that at some point following our  
7 proceedings today.

8           MS. WICK: Yes, Your Honor. We will e-mail the  
9 copy. Thank you.

10          THE COURT: Mr. Broome, anything else?

11          MR. BROOME: Judge, what I think that number two  
12 means that the exhibit, the subpoena was served on the counsel  
13 at the time, not this --

14          THE COURT: Oh, I see. I'm sorry. I misunderstood  
15 what you were saying.

16          MS. WICK: Actually, we may be able to question that  
17 from the witness for clarification, if the Court would find  
18 that helpful.

19          THE COURT: Let me just make sure, I think I am a  
20 bit confused now. Mr. Broome, would you please repeat your  
21 point, please.

22          MR. BROOME: Judge, paragraph two of our stipulation  
23 says Government's Exhibit 45 was served on counsel for Serra  
24 Nissan on June 17th, 2014. I didn't want the jury to be  
25 confused that it was served on me. I represent Ms. Branch

1       only and not the dealership.

2               THE COURT: Right. Okay. I understand now. Thank  
3       you for clarifying.

4       BY MS. WICK:

5       Q     Mr. Visser, at the time that you learned about this  
6       subpoena, you had counsel -- excuse me, the dealership had  
7       counsel; that was not Mr. Broome, correct?

8       A     That's correct.

9       Q     For stipulation two where it says, this subpoena was  
10      served on counsel for Serra Nissan, it's referring to that  
11      other attorney that represented the dealership entity, right?

12      A     That's correct.

13              MR. BROOME: Yes, I am fine with that. Thank you.

14      BY MS. WICK:

15      Q     You said a moment ago that prior to me showing you that  
16      document, you had never seen it?

17      A     No.

18      Q     Without disclosing any conversations that you had with  
19      counsel, do you remember how you became aware of the existence  
20      of that subpoena?

21      A     I don't believe I am able to do that without saying it  
22      came from my counsel.

23      Q     Okay. So nobody at the dealership, not attorneys, nobody  
24      at the dealership spoke with you about the existence of that  
25      subpoena?

1 A I do not believe so from -- I learned of it -- I did not  
2 learn of it from anybody at the dealership. My initial  
3 learning of this document, I did not learn it from anybody at  
4 the dealership.

5 Q Okay. So you did not have a call or a conversation with  
6 Mr. Housner regarding the existence of this?

7 A After I was made aware of its existence, I did have a  
8 conversation with Mr. Housner.

9 Q And I apologize. So you learned of this from some other  
10 method?

11 A Correct.

12 Q Then subsequent to becoming aware of the subpoena, you  
13 had conversations with Mr. Housner?

14 A That's correct.

15 Q What were those conversations, and do you remember when  
16 you had them?

17 A I believe it was the same day that we got served. The  
18 conversation originally was we didn't know why they wanted to  
19 look at these deals, and I had to figure out what's going on  
20 with these deals, what's the common element of these deals.  
21 That was the initial talk with Forest Housner.

22 Q At some point did you understand that that subpoena  
23 requested the deal jackets related to the 15 deals at issue in  
24 this case?

25 A Yes, I did.

1 Q When did you come to understand that?

2 A Mr. Housner told me that he believed that this came from  
3 a document that was found -- when he told me, I thought it was  
4 Kim's computer, but he said desktop. I meant I thought that  
5 was her computer desktop, but he said these were the deals  
6 that was -- a list of deals were on her desktop. That's how  
7 he -- we realized these are the Cullman deals that were RDR'd  
8 to Birmingham.

9 Q And when you realized that, what did you do next?

10 A I texted my Nissan rep and told him the situation and  
11 asked him what we needed to do.

12 Q I am showing you what's been previously admitted as  
13 Government's Exhibit 22. Take a moment and tell me if you  
14 recognize that document.

15 A (Witness complying.)

16 Q Sorry. Let me be clear. Take a look at page 3 or 4 of  
17 the exhibit.

18 A Well, there's three different documents in here. Page 3.  
19 Look at page three? Yes. I recognize this.

20 Q Do you recognize page 3?

21 A Yes.

22 MS. WICK: May we publish page 3, Your Honor?

23 THE COURT: Yes.

24 BY MS. WICK:

25 Q Let's start with page 4. So for you that's the document

1 on the bottom that says DISC 000830?

2 A Yes.

3 Q Do you recognize the e-mail that's kind of in the middle  
4 of that page?

5 A I do.

6 Q What is that?

7 A This is the e-mail that I sent to my district dealer  
8 operation manager, Patrick Byrnes, and I told him. So my  
9 initial was an e-mail, then it was a text, and then it was his  
10 follow-up e-mail. So this was my first e-mail to Patrick  
11 Byrnes informing him of the situation.

12 Q Can you read your e-mail to Mr. Byrnes?

13 A "I need to inform you of a situation that relates to the  
14 quarter bonus that ended on 3/31/13. Serra Visser was over  
15 their objective, and Serra Nissa was under, and legally there  
16 were up to 15 deals that were sold in Cullman, but RDR'd at  
17 Serra Nissan. Cars were actually sold, but the selling dealer  
18 was incorrect on the RDR. What do you suggest I do in this  
19 situation?"

20 Q So you sent that June 18, and that was the date after you  
21 found out about the subpoena?

22 A Correct.

23 Q Mr. Byrnes was who to you at the dealership?

24 A He was my main contact for Nissan. He was what they  
25 called dealer operations manager or DOM for short.

1 Q Did Mr. Byrnes respond to you immediately?

2 A No.

3 Q What did you do when he didn't respond to you?

4 A I called him the following day.

5 Q And do you remember what you discussed with him during  
6 that phone call?

7 A Yes, I do.

8 Q What did you discuss?

9 A I followed up on this e-mail. I said, Patrick, I am  
10 calling to follow up on this e-mail. What do you suggest I  
11 do? He said, why are you bringing this up to me? I said,  
12 well, we need to fix the situation. He said, just let it lie.  
13 I don't care. He said, well -- I said, well, I do care. We  
14 have to straighten this out. He said, well, let me run up the  
15 ladder. Let me talk to somebody and see what I got to do.

16 Q Prior to having that call with him, did you text him when  
17 he didn't respond -- was there a text that you sent to him?

18 A I believe I texted him after I had the phone call,  
19 because when he first told me no big deal, just let it lie,  
20 why even bring it up, it was sold? He said, that's sold. Why  
21 even bring it up? Let it lie. Let sleeping dogs lie was his  
22 exact words. Then he didn't respond. He said he was going to  
23 check with somebody. He didn't respond so I sent him a text.  
24 I believe this was on Saturday. I sent him a text, and he  
25 didn't respond. Then he responded with an e-mail on Monday.

1 Q So, your e-mail is Wednesday, June 18?

2 A Correct.

3 Q And your timeline is that you e-mailed him on Wednesday  
4 June 18, then you had the call, and then you sent the text?

5 A Correct.

6 Q And then he e-mailed his response?

7 A Correct.

8 Q Okay. Let me go to the next page of that exhibit. Page  
9 5, maybe.

10 So you e-mailed him on Wednesday. You said, you think  
11 the call with him was before this text and you texted him on  
12 Saturday.

13 A Yes.

14 Q And this is your text?

15 A Yes.

16 Q Okay. So it's your testimony that after you had a call  
17 in which he said, let sleeping dogs lie, you then texted him  
18 to ask again, do you think Nissan has a problem with leaving  
19 their deals as they are since they were truly sold retail, and  
20 the two stores' total objective was actually hit. Do you  
21 consider it to be an issue? Is just leaving the deals as  
22 reported okay?

23 It's your testimony that you asked these questions  
24 again after the call with him?

25 A Yes. I asked him the question. He said, let it lie.



1 Let sleeping dogs lie. I said, Patrick, I cannot let this  
2 lie. He said, well, let me run it up the ladder. And that's  
3 where we left it. I was expecting a response back from him  
4 because he said -- after he told me, let it lie, I told him I  
5 couldn't. Then he said let me run this up the ladder and run  
6 it by somebody else is what he told me. Then this is me  
7 following up on that.

8 Q And that's why you texted him on Saturday?

9 A Correct.

10 Q Okay. And did he respond to your text?

11 A He e-mailed the response. He did not text the response.

12 Q Okay. And if we go back to page 3 of this exhibit. Is  
13 that his e-mail response to you on the Monday after he sent  
14 the text?

15 A Yes, it is.

16 Q Okay. And without reading the entire thing, essentially,  
17 what was his response to you?

18 A His response was you can't pool sales. If they were  
19 from -- if they were sold in Cullman, they have to be RDR'd in  
20 Cullman. You can't use those RDR's in Birmingham.

21 Q He gave you a mathematic explanation of why that was an  
22 unacceptable practice to Nissan?

23 A Correct.

24 Q What did you do after you received the e-mail from Mr.  
25 Byrnes that discussed the pooling of sales?

1 A We contacted -- I sent a letter to Jeff Creecy, asking  
2 him to correct these sales. I told him that they were RDR'd  
3 in Birmingham. They needed to be corrected and RDR'd in  
4 Cullman. Because so far after the fact, we cannot change the  
5 RDR. He would have to do it in his system.

6 Q I am handing you what's been previously marked as  
7 Government's Exhibit 31. Can you tell me if you recognize  
8 that document?

9 A Yes, I do.

10 Q What is that?

11 A This is a letter that I sent to Jeff Creecy identifying  
12 the 15 deals and tell him if he would like the RDR corrected  
13 to Serra Visser Nissan.

14 Q That's the e-mail you sent to Creecy on August 11th?

15 A That's correct.

16 Q Did he respond to your letter?

17 A He did.

18 Q I am showing you Government's Exhibit 32. Can you take a  
19 look at that document and tell me if you recognize that?

20 A Yes, I do.

21 Q What is that?

22 A This is the e-mail response to my letter to him.

23 Q What did he say in that response?

24 A He said, "Randy, we have analyzed your request to correct  
25 the 15 deals identified in your August 11th letter, but are

1     unable to do so. Among other reasons, this is because the 15  
2     sales at issue are well beyond the general sales audit period  
3     under the Alabama dealer statute. Thanks."

4     Q     And what did you understand him to mean by that?

5     A     That this was past the one-year period, and that and  
6     other reasons, he can't correct the sales. He can't correct  
7     the RDR location of the sales.

8     Q     So what did you do in response to that e-mail from Mr.  
9     Creecy?

10    A     We calculated the amount that we would have earned had  
11    the cars been RDR'd correctly in Cullman, and we cut a check  
12    and sent a letter to Jeff Creecy for that amount.

13    Q     I handing what's been previously admitted as Government's  
14    Exhibit 33. Do you recognize that document?

15    A     Yes.

16    Q     What is that?

17    A     This is the letter that I sent to Jeff Creecy, along with  
18    the calculation and a copy of the check for the deals that  
19    were incorrectly RDR'd to Serra Nissan.

20    Q     Can you look at --

21                 MS. WICK: Your Honor, this has been already  
22    admitted. May we publish this exhibit?

23                 THE COURT: You may.

24    BY MS. WICK:

25    Q     Let's look at page 2. Can we call out just the

1 flowchart?

2 Mr. Visser, do you recognize the attachment to that  
3 letter, the second page?

4 A Yes, I do.

5 Q What is that?

6 A That's a calculation of how the incentive was paid and  
7 how the incentive should have been paid.

8 Q Okay. And what was your calculation -- and I'm sorry.  
9 This is a terrible copy. I don't know if it's any better on  
10 yours.

11 Are you able to actually read what your calculation of  
12 what you calculated you owed Nissan was?

13 A Yes. \$64,800.

14 Q Okay. And who prepared this?

15 A I did.

16 Q Can you look at page 3 of the exhibit.

17 A Yes.

18 Q Do you recognize that?

19 A Yes, I do.

20 Q Can we call up page 3?

21 What is that?

22 A That's a check that was cut to pay back the incentive.

23 Q Could you call up just the bottom portion of the check?

24 Who are the two people that signed that check?

25 A Melissa Yates and Kim Branch.

1 Q Is that the check that you attached with the calculation  
2 and sent in with the letter?

3 A Yes.

4 Q And based on the date of the check, when do you think you  
5 sent that letter?

6 A I believe on August 27th, 2014.

7 Q Mr. Visser, at the time that you were shifting the sales,  
8 based on your instructions in that fax we looked at earlier,  
9 did you understand that it was an unacceptable practice to  
10 Nissan to shift the sales from Cullman to report them in  
11 Birmingham?

12 A Yes.

13 Q Did you understand that when you were saying to Ms.  
14 Branch, book these in accounting in case they audit, what was  
15 your understanding of the purpose of that?

16 A To pass an audit.

17 Q To hide this from Nissan?

18 A To pass an audit so they wouldn't charge us back.

19 Q Okay. Mr. Visser, can you tell the jury what your status  
20 in this case is? Have you been charged?

21 A Yes, I have been charged, and I have pled guilty.

22 Q What were you charged with?

23 A Conspiracy.

24 Q To commit what?

25 A Conspiracy to commit fraud.

1 Q Do you know what kind of fraud?

2 A I think it's just conspiracy to commit fraud.

3 Q Wire fraud, mail fraud? Do you know what type of fraud?

4 A I believe it's wire fraud.

5 Q Okay. Did you have a plea agreement with the government  
6 in this case?

7 A Yes.

8 Q And as part of that plea agreement, did you agree to a  
9 certain set of facts?

10 A Yes.

11 Q Do you remember what those facts were?

12 A Yes.

13 Q Can you tell the jury what they are, or do you remember  
14 them?

15 A The facts were that I conspired to transfer these sales  
16 from Cullman to Birmingham. My involvement in it was a  
17 hundred percent my idea. It was nobody else's idea. I gave  
18 the instructions to Forest Housner, and it got done. Forest  
19 directly reported to me -- he to -- I met with every day at  
20 the dealership -- he is the only person I met with at the  
21 dealership, and he is the one I gave the instructions to.

22 Q As part of your plea agreement, did you agree that at the  
23 time that you gave the instruction, you knew that it would  
24 entail misrepresenting to Nissan North America that cars sold  
25 at Serra Visser Nissan were sold at Serra Nissan when in fact

1     they were not?

2     A     Yes.

3     Q     And as part of your agreement, did you agree that, "K.B.,  
4     the controller of Serra Nissan, created a list of the 15  
5     relevant deals to be given to J.G. to make the false deal  
6     jackets"?

7     A     I agreed that in the event of an audit, she was to create  
8     that list. That was the --

9     Q     Mr. Visser, I am not paraphrasing. I am reading from the  
10    your plea agreement.

11   A     Could I read that plea agreement?

12   Q     Absolutely, if this would refresh your recollection.

13   A     "In the event Serra Nissan was audited by Nissan North  
14   America, K.B., the controller created a list of 15 deals  
15   relevant to be given to J.G. to make false deal jackets."

16   Q     Oh, Mr. Visser, can you read that full sentence at the  
17   bottom of page 4, the entire sentence?

18   A     "As part of the scheme, J.G., a sales manager at Serra  
19   Volkswagen, was instructed to create false documents showing  
20   the cars were sold at Serra Nissan, in the event Serra Nissan  
21   was audited by Nissan North America, Inc. K.B., the  
22   controller of Serra Nissan, created a list of 15 relevant  
23   deals to be given to J.G. to make false deal jackets."

24           MS. WICK: Hold on one second. He is missing some  
25   pages. Is there another copy of the plea agreement? Okay.

1 THE COURT: Ms. Wick, what is the case number there,  
2 please?

3 MR. BROOME: Judge, it's 15-CR-167.

4 THE COURT: Thank you.

5 BY MS. WICK:

6 Q So those are two separate sentences. What you were just  
7 reading -- here, read with me. I have all the pages.

8 THE COURT: Ms. Wick, give me a second to pull it  
9 up, please.

10 MS. WICK: Oh, sure, Your Honor.

11 A I did not take them to be two separate sentences. I  
12 thought the period was the abbreviation for Inc.

13 Q So do me a favor, Mr. Broome did not have the pages when  
14 you were reading.

15 MR. BROOME: Actually, I did, Your Honor. I just  
16 had them out of order. Judge, I am fine now.

17 MS. WICK: Are you good?

18 MR. BROOME: I am good.

19 BY MS. WICK:

20 Q Okay. I want to make sure I understand. You were just  
21 reading the sentence, "As part of the scheme, J.G., a sales  
22 manager at Serra Volkswagen, was instructed to create false  
23 documents showing the cars were sold at Serra Nissan, in the  
24 event Serra Nissan was audited by Nissan North America, Inc."

25 A I didn't know that was a new sentence. I thought Inc.



1 was just a period abbreviating incorporated. I thought that  
2 was one sentence.

3 Q Then it says, "K.B, the controller of Serra Nissan  
4 created a list of the 15 relevant deals to be given to J.G. to  
5 make the false deal jackets." That is a separate sentence.

6 A When I signed this, I did not realize that.

7 Q Do me a favor, if you could read on the bottom of page 5  
8 in bold, the star point where it says, "the defendant hereby  
9 stipulates".

10 A "The defendant hereby stipulates the facts stated above  
11 are substantially correct, and the Court can use these facts  
12 in calculating the defendant's sentence. The defendant  
13 further acknowledges that these facts do not constitute all of  
14 the evidence of each and every act that the defendant and/or a  
15 co-conspirator may have committed."

16 Q Is that your signature below that paragraph?

17 A Yes, it is.

18 Q Did you review this before signing the plea agreement?

19 A Yes, we did. We made several changes to it.

20 Q Is this version that you are reading the version that you  
21 signed that was filed in your case?

22 A Yes, it is.

23 Q Did the Court, at your plea colloquy, ask you if you  
24 agreed to these facts as stated as you just read?

25 A Yes, I did.

1 Q Did you say yes?

2 A Yes, I did.

3 Q As part of your plea agreement, did you have a  
4 cooperation provision with the government?

5 A Yes.

6 Q What is your understanding of that cooperation agreement?

7 A That I have agreed to accept responsibility for what I  
8 have done. I have agreed to cooperate and testify.

9 Q What is your understanding of what you get in exchange  
10 for testifying?

11 A I don't get anything for testifying. I don't get  
12 anything for testifying.

13 Q Do you understand the 5K provision in your plea  
14 agreement?

15 A Yes, I do.

16 Q What is your understanding of that provision?

17 A My understanding is that is -- that's at the discretion  
18 of the government. If they issue a recommendation to the  
19 judge to issue a departure for normal sentencing guidelines.

20 Q So you could theoretically get a reduction in your  
21 sentence for cooperating?

22 A Correct.

23 Q Did you meet with the government several times prior to  
24 your testimony today?

25 A I believe I met with them three times.

1 Q And during those meetings with the government, what  
2 instructions did anyone from the government give you regarding  
3 your testimony today?

4 A Just to tell the truth.

5 Q Did you understand that you could cooperate and get  
6 nothing in return?

7 A Absolutely.

8 Q Do you understand, pursuant to your plea agreement, what  
9 happens if you were to come here today and lie in any way to  
10 the jury?

11 A That the plea agreement would be null and void.

12 Q And what else would happen?

13 A I'd probably be charged with perjury.

14 MS. WICK: Just a moment.

15 No further questions, Your Honor.

16 THE COURT: Mr. Broome, cross examination.

17 CROSS EXAMINATION

18 BY MR. BROOME:

19 Q Good afternoon, Mr. Visser.

20 A Good afternoon.

21 Q Mr. Visser, in listening to your testimony today, it  
22 seems like you like for your dealerships to win and be on top  
23 in your district; is that right?

24 A Yes, sir.

25 Q And unfortunately sometimes in our overzealousness, we

1 cross the line to win, don't we?

2 A Yes, sir.

3 Q And you crossed the line to win in this situation?

4 A Yes, I did.

5 Q Now, I believe you already said this, it was your idea?

6 A One hundred percent.

7 Q How did you come up with the idea?

8 A In my mind, I justified that it was okay at the time.

9 Q I mean, have you heard of it being done before, or you  
10 just came up with the idea on your own?

11 A I had heard of it being done before. In our industry, I  
12 have heard about it being done before.

13 Q And reading through all of these documents that the  
14 government's been nice enough to give me, I think there's six  
15 or 7,000 pages, do you recall talking to Forest Housner about  
16 how the sales department had incentives with parts?

17 A I don't recall the conversation specifically.

18 Q Would you have had a specific conversation with Mr.  
19 Housner about, yeah, we buy the parts in Birmingham to meet  
20 our incentives, but we sell the parts to the Cullman store?

21 A No, I don't recall that conversation.

22 Q I won't talk to you about that. I will talk to Mr.  
23 Housner about that.

24 A Okay.

25 Q But it was your plan to transfer the deal, which I

1 believe your word was shift the deals from Cullman to  
2 Birmingham?

3 A Yes, it was.

4 Q And you communicated that to Forest Housner?

5 A That's correct.

6 Q Did you communicate that plan to Kim?

7 A No.

8 Q Before it happened?

9 A No.

10 Q Y'all didn't have a meeting in a smoke-filled room, you,  
11 Forest, and Kim and decided that this is what we're going to  
12 do?

13 A No.

14 Q You decided on your own?

15 A Yes.

16 Q And then instructed Mr. Housner to do it?

17 A Yes.

18 Q Now, you gave some instructions on how to accomplish  
19 this; is that right?

20 A That's correct.

21 Q Did you personally talk to Kim about those instructions?

22 A No.

23 Q Never?

24 A No.

25 Q Speaking of talking to Kim, we've talked about some

1 audits today, also. Was Kim involved in those audits?

2 A Just to the point that I have talked about earlier today.

3 Q She was pulling deals they requested?

4 A That's correct.

5 Q She was not in any of these closing meetings or exit  
6 meetings -- what do you call them?

7 A Closing meetings. No, she was not involved in the  
8 closing meetings.

9 Q Tell the ladies and gentlemen of this jury how the  
10 physical plant there is at the Birmingham store. I mean,  
11 where is the accounting office or the controller's office  
12 located?

13 A I believe at the time it was located upstairs in  
14 Volkswagen.

15 Q This would be March of April of 2013?

16 A Yeah, at that time, it would have been upstairs in our  
17 Volkswagen dealership.

18 Q And help me out, upstairs, big as this courtroom, smaller  
19 area?

20 A It's probably about half the size of this courtroom.

21 Q How many employees would you have up there?

22 A We had --

23 Q At the time.

24 A At the time, we had approximately seven or eight, nine  
25 employees in there.

1 Q Where would the salesmen be located at the time?

2 A For which dealership?

3 Q The Nissan dealership?

4 A They would be in a different building.

5 Q Across the street?

6 A Across the street. Yeah, across the street.

7 Q But in a different building?

8 A In a different building.

9 Q As far as you know, was Kim ever involved in any of the  
10 sales meetings?

11 A No.

12 Q When you first got notice that the government or the IRS  
13 was investigating Serra Nissan, it wasn't about these 15  
14 deals, was it?

15 A No, sir.

16 Q Was it about some financial documents?

17 A Yes.

18 Q Okay. Would Kim Branch have had anything to do with  
19 those financial documents?

20 A No.

21 Q Would she have even seen those financial documents before  
22 they were submitted to the bank?

23 A No.

24 Q Would Kim have been involved in the day-to-day sales of  
25 the cars there?

1 A No.

2 Q Would she be involved -- or was she involved in the  
3 day-to-day keeping up with how close you were to the  
4 incentives?

5 A No.

6 Q There's been some documents the government has introduced  
7 about that you would get from your DOM, that's what the  
8 director of district --

9 A Dealer operations manager.

10 Q Thank you. Would those have ever gone to her?

11 A No.

12 Q They would go to you?

13 A That's correct.

14 Q They would go to Mr. Housner?

15 A Yes.

16 Q So Kim would have no idea, at the time, we're 41 units  
17 short or we're ten units short?

18 A No, she would not know.

19 Q While I'm on that subject, talking about reconciling the  
20 incentives that Nissan received, I believe you said you and  
21 Kim would talk about the reconciliations, or how would y'all  
22 do that?

23 A Well, if it was a dealer incentive --

24 Q Just the dealer.

25 A Okay. The dealer incentive, she would have to get that



1 from either Forest or I; how much we earned in dealer  
2 incentive, she would not know. So either we would just send  
3 her an e-mail saying, here is how much we earned. If we  
4 didn't send her an e-mail, she would send us an e-mail saying  
5 how much do we earn in Nissan money, and we would send her an  
6 e-mail back.

7 Q Would it have been for an individual car or just the  
8 total number?

9 A Total number.

10 Q So there really wasn't any reconciliation other than  
11 putting that total number in the accounting?

12 A That's correct.

13 Q So she didn't look at, well, this car number one should  
14 have been this amount and this is what we got?

15 A Not for dealer incentives, no.

16 Q Okay. While we're talking about other incentives, were  
17 there customer incentives?

18 A Yes, there were.

19 Q Without going into too much detail, would there be a lot  
20 of different customer incentive programs?

21 A Yes.

22 Q At the same time?

23 A Yes, there were.

24 Q This lady would like you and I both a lot better -- I  
25 will finish the question, and you answer, and she'll like you

1 better. Okay?

2 And sometimes I don't know when I am going to stop, so  
3 it's not all your fault.

4 If I showed you, I think let's just talk about  
5 Government's Exhibit 19. What does that purport to be?

6 A This appears to be a check that was cut from Serra Nissan  
7 to Serra Visser Nissan for the customer portion of incentives.  
8 I believe this relates to the 15 deals.

9 Q Okay. The customer portion?

10 A Customer portion.

11 Q This has nothing to do with the monies we're talking  
12 about today?

13 A No.

14 Q And how would Kim have got these numbers, if you know?

15 A The sales department would have set it up; would have  
16 told her how much each one was.

17 Q This was to pay the Cullman store back for the customer  
18 incentives they didn't get because of the deals got  
19 transferred to Birmingham?

20 A This was -- that the Cullman store gave the customer.  
21 This is the because the Cullman store gave the customer that  
22 rebate, so this is the refund that the Cullman store -- for  
23 the rebate that they gave the customer.

24 Q Right. Just to put them back to even?

25 A Correct.

1 Q On Government's Exhibit 33. Which is your letter to Jeff  
2 Creecy, who came up with those figures?

3 A I did.

4 Q How did you do that?

5 A I read through the program and put these figures in an  
6 Excel spreadsheet and calculated how much we earned, but I  
7 knew how much we earned, but I calculated it, and then I  
8 calculated how much we should have earned had the sales been  
9 reported correctly.

10 Q Then there's a check there?

11 A That's correct.

12 Q And that check was for how much?

13 A \$64,800.

14 Q Who actually made out that check?

15 A I instructed it to be made out.

16 Q Who actually made it out?

17 A I don't know who -- I don't know.

18 Q Would Kim have more likely than not been the person to  
19 make this out?

20 A Most likely. Somebody in the office. There are several  
21 people that can cut a check. This one does not show who  
22 actually wrote this check. I would assume Kim.

23 Q Well, let's say Kim did it, she would have got the  
24 figures from you?

25 A Correct.

1 Q She wouldn't have calculated the figures herself?

2 A No.

3 Q Okay. Thank you. Before the deals were transferred, I  
4 believe you have already told me your instructions, you didn't  
5 have any conversation with Kim or send Kim those instructions?

6 A No, I did not.

7 Q You told Mr. Housner to send the instructions to the  
8 Cullman store?

9 A Yes, that's correct.

10 Q Okay. Do you know who at the Cullman store would have  
11 gotten them? Did you give Mr. Housner any instructions who to  
12 send them to?

13 A I believe I would have told him to get with Greg.

14 Q And Greg would have been the --

15 A -- general sales manager.

16 Q General sales manager. Okay. So you and Kim didn't have  
17 some meeting before all of this happened, and say, this is  
18 what we have got to do to hide this from everybody. You  
19 didn't do that?

20 A No.

21 Q Now, at some point in time -- well, I will just ask this,  
22 generally, are you there at the dealership in Birmingham every  
23 day at the time back in March of 2013?

24 A Not every day.

25 Q Okay. You tell me how many days a week you would be

1       there?

2       A     It depends on the time of the year.

3       Q     Let's go to March.

4       A     Okay. March would have been -- school was in. I would  
5       have been there probably at least four days a week.

6       Q     Okay. And every day that you were there, those four days  
7       a week on an average, would you see Kim, or would you go over  
8       to the accounting office?

9       A     No.

10      Q     In your best judgment, did you go over there once a week  
11     to check on her or never check on her? Or is neither one of  
12     those fair?

13      A     I believe I have been to the Kim's office twice in two  
14     years.

15      Q     Twice?

16      A     Twice.

17      Q     Two years?

18      A     Two years.

19      Q     Okay. Would it be fair to say that to this jury that the  
20     controller was kind of a separate entity from the sales and  
21     the rest of the organization?

22      A     It was a separate department, yes.

23      Q     And a department that you necessarily didn't have a  
24     hands-on daily contact with?

25      A     No, my contact was more e-mails and just reviewing the

1     financials.

2     Q     Well, you got my next question.  How would you  
3     communicate with Kim the majority of the time?

4     A     Mostly e-mails.

5     Q     And when you are talking about going over financials,  
6     what are we talking about?

7     A     Reviewing the financial statement, the month-end  
8     financial statement.

9     Q     Are we talking about things like light bills,  
10    advertisement?  What are we talking about?

11    A     Yes.  Everything on the financial statement:  Expenses.  
12    Why is this expense so high?  What is in this account?  Can  
13    you take a look at this?  This looks high.  Those type of  
14    things.

15    Q     You gave Ms. Wick an idea of what Ms. Branch's job  
16    descriptions were.  You hired her, right?

17    A     That's correct.

18    Q     And she came with very good recommendations, I guess?  
19    You hired her?

20    A     Yes, she did.

21    Q     And was your dealership larger than the other dealerships  
22    she has worked at, if you know?

23    A     I don't know.  I don't know.

24    Q     Okay.  But that really didn't play in your decision to  
25    hire her?

1 A No, she came with very high recommendations. And so, I  
2 hired her.

3 Q What would you say if you had to list a number one or  
4 number two reason why you hired her as a controller?

5 A Because her references said, if you can hire her, she is  
6 excellent. That was their words, and that's primarily what  
7 made my mind up.

8 Q And she did you a good job?

9 A Yes, she did.

10 Q And she is still employed, if you know, isn't she?

11 A Yes, that is correct.

12 Q Now, back to her responsibilities, I don't really know  
13 how to ask this question. You are CPA, right?

14 A I was.

15 Q How would you describe the controller's office or the  
16 accounting office before Ms. Branch got there?

17 A It was a disaster.

18 Q That's good description. What do you mean by that?

19 A Well, I didn't know how bad it was until Ms. Branch got  
20 there, but there was un-deposited checks from a year ago,  
21 there was -- it was just a complete disaster. Nothing had  
22 been reconciled. Nothing had been -- it was a mess. It was a  
23 very large job getting it clean.

24 Q With your CPA background, would it have been a difficult  
25 task to have gotten the disaster up to acceptable levels?

1 A Yes.

2 Q How would you describe her performance doing that?

3 A She did great. Very good. Excellent.

4 Q Is it something you could have done in 40 hours a week?

5 A No. It took months to fix our problems.

6 Q Was she able to get things -- I think she started --  
7 well, you tell me, she got started in November 2012?

8 A I believe that is correct.

9 Q Does that sound right?

10 A Yes, I believe that's correct.

11 Q What we're talking about here happened in March in, what,  
12 the first week of April of 2013?

13 A That's correct.

14 Q Had she gotten the office, I guess, back manageable by  
15 that time?

16 A I don't recall when we got it manageable. It was a very  
17 long process. It took months. I don't recall when. But she  
18 would just give me updates that we're still cleaning  
19 schedules. We're still getting things up-to-date and current.

20 Q Would it have been a stressful situation for her with a  
21 lot of things to do or for any person in that situation?

22 A Yes, it would have been.

23 Q Back tracking or going forward to March of 2013, you  
24 realize you are not going to make the big money -- I think  
25 that's Ms. Wick 's description -- for the \$700 payouts. Would



1 it be fair to say that one of your mottos at your dealerships  
2 are Go Big Or Go Home?

3 A I don't know if that's our motto. I don't know if I --

4 Q I have read that somewhere. But that's not something you  
5 said?

6 A No.

7 Q Forget I asked that. But some time March of 20  
8 something, the end of the month of March, you realize we're  
9 not going to make our quota?

10 A That's correct.

11 Q Is that the word quota?

12 A That's accurate. We're not going to hit our target  
13 objective.

14 Q Okay. And you come up with this plan, transfer the  
15 shift, the Cullman deals to Birmingham?

16 A Yes, I did.

17 Q And that's going to entail shifting a lot of paperwork,  
18 sales tax. What all would it entail shifting around?

19 A I thought we were just going to do the bill of sale and  
20 the title application, and that was it. It would be booked in  
21 Birmingham as a Birmingham sale. It would have paid  
22 Birmingham tax. It would have been a Birmingham deal.

23 Q You instructed Mr. Housner to basically get this done?

24 A Correct.

25 Q Not Kim?

1 A No.

2 Q Now, later on, there are e-mails which have been  
3 admitted, and I am not really sure what number. Oh, thank  
4 you. An e-mail from you to Forest Housner and Kim dated June  
5 the 1st. Again the highlighting is mine. That's Government's  
6 Exhibit 24. And it says what it says. Right?

7 A Yes, sir.

8 Q And I can't see it that far away.

9 MR. BROOME: Judge, I don't think he minds if I  
10 stand this close to him. Is it all right with the Court?

11 THE COURT: Is there an objection, Mr. Visser?

12 THE WITNESS: No. That's fine.

13 BY MR. BROOME:

14 Q It says, I just -- well, when Birmingham missed their  
15 objective two months ago and we used Cullman sales, did we  
16 book these unit in Reynolds accounting under Birmingham?  
17 That's your accounting system, right?

18 A That's correct.

19 Q "I just wanted to make sure we did. When Nissan audits  
20 us, they get a log of every deal booked in Reynolds..."

21 This would have come back to you from Kim, right?

22 A Correct.

23 Q And she tells you they were not booked in accounting?

24 A That's correct.

25 Q But that she had the list, and she could manually add

1     them. What does manually add them? I will ask her, but what  
2     does it mean to you?

3     A     It means that the Excel spreadsheet -- in the event of an  
4     audit, she could manually add those 15 deals if we are  
5     audited. In event we were audited, she would extract the  
6     information, she would manually add these deals, and then send  
7     that.

8     Q     Like manually, is that typing on a computer? Keying it  
9     on a keyboard?

10    A     Keying it, yes.

11    Q     Okay. Jeff also created a Birmingham deal jacket?

12    A     That's correct.

13    Q     And you didn't know that was going to happen?

14    A     No.

15    Q     Okay. So we would have them in case they ever need to be  
16    pulled. My question is, a long way to get there, from June  
17    the 3rd, you e-mailed her back on a Saturday June the 27th,  
18    some --

19    A     No, that's July.

20    Q     July. Yes. Thank you. Some six weeks later, give or  
21    take?

22    A     Yes.

23    Q     If you remember, what prompted you that day to do that?

24    A     I do not recall why it took me so long. I don't know.

25    Q     And you just told her, okay, just manually add them, or

1 manually remove them from Cullman --

2 A Yes.

3 Q -- when they do the next dollar. Was this the last real  
4 conversations or e-mails back and forth you had with Kim about  
5 those 15 deals?

6 A Yes.

7 Q Until the subpoenas came?

8 A Yes.

9 Q Okay. While I'm on those deal jackets, did you ever  
10 actually physically -- I can't remember if it was blue or  
11 green -- but did you ever see a deal jackets?

12 A If there was problem deal, I would request the deal to be  
13 pulled, and then I would look at it at that time.

14 Q This is not a deal jacket, but it's -- do they look like  
15 this (indicating) with an expandible folder like this?

16 A They're not expandible. Just like that, but not  
17 expandible on the sides.

18 Q Again, this is not a deal jacket either. Is it more like  
19 this (indicating)?

20 A But the sides are. It's enclosed. It's a pocket.

21 Q Now, later on, once you -- how did you become aware that  
22 the government had subpoenaed the 15 deal jackets?

23 A I believe I was made aware of it by someone not at the  
24 dealership.

25 Q Don't tell me what your lawyer said. Did your lawyer

1 tell you?

2 A I can't tell you. My lawyer told me, yes.

3 Q That's all I am going to ask about that. What did you do  
4 then?

5 A We instructed Forest to figure this out. Let's look at  
6 these deals, figure this out. Why do they want these deals?

7 Q You didn't instruct Kim to do anything?

8 A No.

9 Q Did you even talk to Kim about it at that point in time?

10 A I don't -- no, I did not.

11 Q No. Okay.

12 MR. BROOME: Your Honor, I know I missed something I  
13 wanted to ask him. Could I have about 30 seconds?

14 THE COURT: Sure.

15 BY MR. BROOME:

16 Q Mr. Visser, once you learned about the subpoena for the  
17 deal jackets, is that when you contacted your district  
18 operations manager?

19 A Yes, after I learned what the 15 sales and that they were  
20 from Cullman, RDR'd to Birmingham, that's when I contacted my  
21 DOM.

22 Q Would it be fair to say you did just about everything you  
23 could to get them their Nissan -- their money paid back and  
24 this resolved?

25 A Yes, I did.

1 Q And if I paraphrased you right, you said Mr. Byrnes said,  
2 let sleeping dogs lie, or something like that.

3 A Yes, he did say that.

4 MR. BROOME: That's all I have. Thank you, Your  
5 Honor.

6 THE COURT: Ms. Wick.

7 MS. WICK: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. WICK:

10 Q Mr. Visser, I am handing you what's been previously  
11 marked as Government's Exhibit One. Do you recognize that?

12 A I recognize it as a deal jacket. I don't recognize this  
13 exact deal.

14 Q When Mr. Branch [sic] earlier was holding up the file  
15 folder --

16 THE COURT: Mr. Broome.

17 BY MS. WICK:

18 Q Mr. Broome, I apologize. Sorry.

19 MR. BROOME: It's okay. I've been called a lot  
20 worse.

21 BY MS. WICK:

22 Q When Mr. Broome handed you the folder, and you were  
23 talking about the deal jackets, is that what a deal jacket  
24 looks like?

25 A Yes, this is a deal jacket.

1 Q Can you just show the jury -- just it's just a folder  
2 with a bunch of paperwork in it?

3 A This is the paperwork that the sales department would  
4 have created. And then this is deal jacket -- once it gets  
5 booked in accounting and put in a deal jacket and filed in a  
6 filing cabinet.

7 Q Once it gets booked in accounting, that's when it gets  
8 the color-coded deal jacket?

9 A That's correct.

10 Q Do you know what color that is what dealership that deal  
11 jackets came from?

12 A I do not.

13 Q Let me take that back from you.

14 Earlier when Mr. Broome was asking you questions  
15 about, I think, pooling of sales, you said you did it because  
16 you had heard of the process of it being done before. Who did  
17 you hear doing that process prior to this?

18 A I have just read about it in the automotive news. That's  
19 not why I did it. I just felt I was wronged by Nissan, and so  
20 I felt it was just justified at the time to do it. I know  
21 it's wrong. But two wrongs don't make a right, but I did it.

22 Q What did you say at the beginning of your answer just  
23 now? You thought you were --

24 A I said I didn't do it because I had heard about it  
25 somewhere else. I have said I did it because I felt like I

1 was wronged by Nissan.

2 Q You were wronged by Nissan?

3 A Yes.

4 Q How?

5 A That I thought our objectives were way too high. I was  
6 told our objectives were very high for the Center Point store.

7 Q So you felt the 170-something cars that Birmingham had to  
8 get was unfair in comparison to the 70 cars -- and I think it  
9 may have been 77 -- but 70 cars or so versus 77 or so cars  
10 that Cullman had to sell?

11 A It wasn't Cullman, I felt it was unfair because of the  
12 objective that our competition got. So if they got a lower  
13 objective than we got, yeah, they should have been selling  
14 more cars than we sold.

15 Q Did you contact Nissan and tell them that you felt that  
16 was unfair?

17 A Every month I would tell them it's unfair.

18 Q Did they do anything about it?

19 A They told me they would help me. They would do what they  
20 could. They know it's unfair, and that's all they said.

21 Q You decided to steal \$64,800 from them?

22 A Yes.

23 Q When you read about it in Automotive News -- what is  
24 Automotive News?

25 A It's just our publication for the automobile industry.



1 Q When you read about the pooling of sales practice in the  
2 Automotive News, was it an article that said, this is a good  
3 practice or an unacceptable practice?

4 A I don't recall. I don't know exactly where I learned  
5 about it. I have read about --

6 Q Well, you just said very specifically that you heard  
7 about it in Automotive News. So when you heard about it from  
8 Automotive News, what was the context of what you heard?

9 A I don't recall. I don't recall.

10 Q Did you have the ability to book these deals in  
11 accounting in Birmingham?

12 A No.

13 Q So when -- in your e-mail, when you were e-mailing Ms.  
14 Branch and Mr. Housner, who had the ability to book those  
15 deals in accounting in Birmingham?

16 A The deal coster would have booked those deals.

17 Q Who was responsible for overseeing that process?

18 A Kim was over the office.

19 Q Were you aware that Ms. Branch booked deals in  
20 accounting?

21 A I was not aware of.

22 Q You were not aware of that?

23 A No.

24 Q When you reminded her in June and said, "when we booked  
25 these deals in Cullman and Nissan missed its objectives," your

1 very first sentence presumed that she and Mr. Housner were  
2 already aware of that, didn't it?

3 A That's correct, yes.

4 Q So, earlier you said you didn't personally have  
5 conversations with Ms. Branch, but is it fair to say that by  
6 the time you sent that e-mail, were you aware that somebody  
7 had had conversations with Ms. Branch about those Cullman  
8 deals being booked in Birmingham?

9 A Yes.

10 Q Earlier you said that Mrs. Branch's involvement in the  
11 audit process was -- I think you use the word limited. But if  
12 I understood you correctly, you also said that she was  
13 responsible for preparing the Excel report that would go to  
14 Nissan for them to find discrepancies to determine if they  
15 needed to come to do the onsite audit?

16 A That's correct.

17 Q And in your e-mail to her, I think it was your response  
18 e-mail in July, you said, okay, we'll just manually add them  
19 or remove them when they audit. So, is it fair to say you  
20 were instructing her when it is your job to send these, make  
21 sure that you either hide it or take them off from the  
22 information that you submit to Nissan?

23 A Yes.

24 Q Did she ever respond to you in e-mail, I don't want to do  
25 this, I'm not comfortable, I don't understand your

1 instructions?

2 A I don't believe I got a response. I don't believe I got  
3 a responding e-mail.

4 Q When she responded to you two days after your initial  
5 e-mail, was there any impression that you got that she didn't  
6 understand exactly what you were asking her to do?

7 MR. BROOME: Judge, I have been very lenient, but I  
8 have to object to that. Is there any -- it calls for a mental  
9 operation of his interpreting a mental operation of --

10 THE COURT: Sustained.

11 BY MS. WICK:

12 Q Were there any other communications that you had with Ms.  
13 Branch, other than the e-mails that we've been discussing in  
14 terms of explaining the process, clarifying things, were there  
15 any other communications that you had with her about this  
16 other than those e-mails?

17 A No.

18 Q I think you also said her involvement in the audit in  
19 addition to being responsible for compiling all the accounting  
20 data. Was she responsible for pooling the deal jackets that  
21 Nissan would request if they came onsite?

22 A We would give her the list, and I believe -- I don't  
23 think she would pull them directly, but she would assign it to  
24 somebody to pull the deals.

25 Q Was it her job to make sure that all of the deals that

1 they requested were present for the audit?

2 A Yes.

3 Q If they requested the deals for these 15 Cullman deals,  
4 based on her e-mail that said, "Jeff created Birmingham deal  
5 jackets," what was your understanding of which deal jackets  
6 she would have to pull if Nissan audited?

7 A The deals that were sold in Cullman but RDR'd in  
8 Birmingham.

9 Q But I'm talking about the deal jackets. You said earlier  
10 they would be responsible for pulling the deal jackets if  
11 Nissan audited, right?

12 A That's correct.

13 Q The e-mail that she responded to you said, and "Jeff made  
14 a set of Birmingham deal jackets in the event that they asked  
15 the deals to be pulled." After reading that e-mail, what was  
16 your understanding of which deal jackets she would have to  
17 pull if Nissan audited, the Birmingham deal jackets or the  
18 Cullman deal jackets?

19 A The Birmingham deal jackets.

20 Q Mr. Broome asked you about where her office was located.  
21 I think you said it was across the street at the Volkswagen  
22 store and that Serra Nissan was across the street?

23 A That's correct.

24 Q What did you estimate was the distance between those two  
25 stores?

1 A 150 yards.

2 Q Did you ever see her make that walk?

3 A Yes.

4 Q So she was capable of walking between the two stores if  
5 she needed something?

6 A Yes.

7 Q Did you ever see her pick up the phone and call people at  
8 the Birmingham store if she needed something in order to do  
9 her job?

10 A She's called me before. I can't speak on her to call  
11 anybody else. I am sure she has.

12 Q Earlier -- actually, let me come back to that. You said,  
13 no, she wouldn't have had to do like a reconciliation when she  
14 got the lump sum. On the check that we were referring to, I  
15 think it was Government's Exhibit 19. Can we pull that back  
16 up?

17 Under the description where it says SVN incentive,  
18 then control number, and account number, and the amount, where  
19 would that information come from when this check is printed?

20 A It would have had to be keyed in.

21 Q What does that mean?

22 A Just typed in a computer into the accounting system -- or  
23 into this check. The detail for this check.

24 Q Would it have to be keyed in by a person where it says  
25 "Created by: KimB"?

1 A Yes.

2 Q So somebody would have had -- Ms. Kim B, which I think  
3 earlier you said Kim Branch -- would have had to key in each  
4 of these descriptions, each of those SVN incentives for each  
5 of those control numbers for each of those accounts with each  
6 of those amounts?

7 A That's correct.

8 Q Is that reconciling the incentive payments in order to  
9 send them to Cullman?

10 A This is a customer incentive. The question Mr. Broome  
11 asked me was about dealer incentives.

12 Q I am asking you is that reconciling incentives in order  
13 to make a payment from the Birmingham dealership to Cullman?

14 A Yes.

15 Q You are a CPA, as well, right?

16 A I was a CPA.

17 Q You were a CPA. Would you say that you were familiar  
18 with Ms. Branch's day-to-day responsibilities?

19 A Fairly. I could not do her job but fairly responsible.  
20 I was an auditor. I was not a bookkeeper. I was an auditor  
21 for two years. That's it.

22 Q When you say you were an auditor and not a bookkeeper,  
23 what would you -- how would you describe her responsibilities  
24 as the bookkeeper? What was she responsible for doing at  
25 Serra Nissan -- for Serra Nissan, Serra Volkswagen, and Serra

1 Visser Nissan?

2 A She was responsible for keeping the books clean.

3 Q When you say keeping the books clean, do you also mean in  
4 order?

5 A Yes.

6 Q Do you know what goes into that in terms of the line by  
7 line management of the books, reconciliation -- you said  
8 preparing tax returns?

9 A I can give you overview. I couldn't tell you exactly,  
10 no.

11 Q Is it fair to say that her responsibilities for \$120,000  
12 base salary plus 2 percent of the net were extensive as the  
13 controller of Serra Nissan?

14 A Yes.

15 Q In 2013, do you happen to know what the net profit was?

16 A I don't recall the exact amount. I could guess. I could  
17 get close. It was about \$1.8 million, I believe.

18 Q And she would have received 2 percent of that in addition  
19 to her \$120,000 base salary?

20 A It was \$100,000 base salary, yes. She would have been  
21 paid 2 percent of \$1.8 million.

22 Q Earlier you said this was in relationship to customer  
23 incentives, not dealer incentives. But why would Serra Nissan  
24 Birmingham have to pay Cullman for customer incentives?

25 A If the vehicle was RDR'd under Serra Nissan, Serra Nissan

1 would receive the incentive. But in reality, Serra Visser  
2 Nissan gave this incentive to the customer. So Serra Nissan  
3 received it, and Serra Visser Nissan gave it away, so they had  
4 to pay them to reimburse them for that.

5 Q So this was related to the shifting of the 15 sales -- is  
6 it fair to say it was just a by-product of what happened when  
7 you shifted the sales?

8 A Yes.

9 Q So the controller, when she created this, Kim B, would  
10 have had to understand that this was required in the  
11 accounting process in order to make sure that when we shifted  
12 those sales, financially, we did what needed to be balanced  
13 between the stores and the book --

14 MR. BROOME: I am going to object to that question,  
15 when we shifted the sales. I think that's what this whole  
16 case is about, Your Honor. If she would rephrase the question  
17 when Mr. Visser shifted the sales or Mr. Housner. I will  
18 object.

19 THE COURT: Why don't you restate the question,  
20 please, Ms. Wick.

21 BY MS. WICK:

22 Q When you and others involved in the scheme shifted sales,  
23 there were accounting details that had to be done in order to  
24 make sure that Cullman got paid, Birmingham paid Cullman,  
25 right?



1 A Correct.

2 Q So these customer incentives were paid because you  
3 shifted the sales, right?

4 A Well, these were paid to the wrong dealership. That's  
5 because we shifted the sales, that's correct.

6 Q When you say they were paid to the wrong dealership, what  
7 do you mean?

8 A Because they were paid to Serra Nissan when they were  
9 actually -- these cars were actually sold at Cullman.

10 Q Right. Why wasn't Nissan paid for those customer  
11 incentives?

12 A Because they were RDR'd at Birmingham Nissan.

13 Q So when somebody falsely RDR'd those cars to Nissan,  
14 Birmingham got customer incentives it was not entitled to?

15 A Correct.

16 Q I want you to correct me if I am wrong.

17 A That's correct.

18 Q Then somebody had to go in, because Cullman was in fact  
19 entitled to those customer incentives and in the accounting  
20 moved that money from Birmingham to Cullman?

21 A That's correct.

22 Q If I understood you earlier, based on this document, the  
23 person who did that is created by Kim B, that was Kim Branch?

24 A That's correct.

25 Q Earlier Mr. Broome was asking you about the larger or

1 other -- let's say the other fraud investigation at Serra  
2 Nissan that involved other employees. He asked you if Ms.  
3 Branch was involved in that fraud. Do you actually know  
4 whether Ms. Branch was aware of the false financial documents  
5 or the fraud that was being committed at Serra Nissan?

6 A I don't believe she was aware, if that was the question.

7 Q Do you actually know for sure?

8 A I don't know.

9 MR. BROOME: Judge, that question has been asked and  
10 answered.

11 THE COURT: Move on, please.

12 BY MS. WICK:

13 Q Mr. Visser, how many times did you e-mail or text Ms.  
14 Branch per day?

15 A I would say, it would be a guess, but on average I would  
16 -- very little. I would say maybe once a week.

17 Q Once a week.

18 A That would be my guess. I would have to go back and  
19 count the e-mails. It wouldn't be a lot. We would have a  
20 conversation, and then maybe we could send three or four back.  
21 But unless there was something that I needed, I would get with  
22 Forest. I would have to go back and look, but that's just my  
23 estimate.

24 Q I just want to remind you that you are under oath. I am  
25 going to ask you again.

1           THE COURT: I think the witness knows that he is  
2 under oath, Ms. Wick.

3 BY MS. WICK:

4 Q Earlier you talked about that it was a very large job --  
5 that your dealership -- I think the words you used was a  
6 disaster, financially, before Ms. Branch came in, and that it  
7 was a very large job getting it cleaned. Would you say it was  
8 difficult?

9 A Yes.

10 Q Would you say that it required an extensive knowledge of  
11 accounting?

12 A Yes.

13 Q Would you say it required an attention to detail?

14 A Yes.

15 Q Would you say it required an understanding of how sales,  
16 incentives, and reconciling worked?

17 A Yes.

18 Q Would it have been possible for somebody who did not  
19 understand any aspect of the dealership to do what she did in  
20 terms of cleaning up your dealership?

21 A No.

22 Q What was your current relationship with Ms. Branch?

23 A I still -- I no longer have an interest or a position at  
24 Serra Nissan or Serra Visser Nissan. I still am an owner at  
25 Talladega Ford. And currently, she still does some things

1 that -- accounting-wise at Talladega Ford. We've been in the  
2 process of moving them back. We have our own office at  
3 Talladega Ford. We're just in the process of moving all the  
4 accounting back to Talladega Ford.

5 Q Earlier you mentioned something that one of the things  
6 that she would do as part of the cleanup process was cleaning  
7 schedules. What is cleaning schedules?

8 A Just getting rid of receivables that are no good. If we  
9 don't have the money coming, we need to write that money off.  
10 So that would be cleaning a schedule.

11 Q Do you know what a dollar car is?

12 A A dollar car is a car we've appraised for a dollar.

13 Q Do you know what a ghost trade is?

14 A No, I had never heard that term until you told me, showed  
15 it to me.

16 Q What is your understanding -- can you explain to the jury  
17 what a dollar car is?

18 A A dollar car -- before you told me, otherwise, was a car  
19 that we appraised for a dollar. The customer traded it in.  
20 Maybe it wasn't running, it was in their yard, and we maybe  
21 allowed them a thousand dollars. But the ACV, the actual cash  
22 value was one dollar. We would appraise that car for one  
23 dollar, putting it into accounting for one dollar. Because we  
24 would have to hire a tow truck to go get it, take it to the  
25 auction and sell it, and then we would appraise it for one

1 dollar.

2 Q When you structured deals for customers that required  
3 financing, and you put that the car was worth a dollar, did  
4 you tell the lender that the car was worth a dollar?

5 MR. BROOME: Your Honor, I am going to have to  
6 object. I really don't see the relevance to this case if  
7 we're going into -- I did bring it up, I will concede that  
8 about there was another investigation, but that doesn't  
9 involve Ms. Kim. I really don't see the relevance to this  
10 case.

11 THE COURT: All right. Why don't we do this. Let's  
12 take a ten-minute break, please, and I would like to talk to  
13 counsel.

14 I am going to remind the jury not to discuss any of  
15 the evidence that you have heard this afternoon while you are  
16 in the jury room on break.

17 (A jury recess was taken at 2:27 p.m.)

18 (The following proceedings were held in the hallway, out of  
19 the hearing of the jury:)

20 THE COURT: Ms. Wick, explain to me what I am  
21 hearing testimony about because you have had some initial  
22 questions, and I don't know what this is leading to or what  
23 it's about.

24 MS. WICK: Yes, Your Honor. So one of the things  
25 that I told defense counsel, when we were producing the

1 information from Mr. Visser and some of the other cooperating  
2 witnesses, was that it was our understanding that the cleaning  
3 of the schedules was one of the things that the dealership did  
4 to clean off the fraudulent deals. And I told him that that  
5 line of discussion opens the door for us to ask either Ms.  
6 Branch or a witness that discusses that process that that  
7 would have been knowledge of fraud at the dealership. So she  
8 would have had knowledge of other fraud at the dealership.  
9 And I explicitly had that discussion with him to say, if you  
10 bring up the other fraud and we go into what her role was, and  
11 cleaning schedules is referenced, that process cleaning  
12 schedules, wiping off the dollar cars and ghost trades that  
13 were fraudulent.

14 THE COURT: Okay. Now, let me make sure you I  
15 understand why you think you are entitled to go into this.  
16 Because Mr. Visser raised cleaning schedules in response to  
17 your questioning originally.

18 MS. WICK: No --

19 THE COURT: Yes, he did. He used the term cleaning  
20 schedules when you were examining him.

21 MS. WICK: Oh, I am sorry. I apologize. I did not  
22 hear that. I heard it on cross.

23 THE COURT: We can go back and read the transcript  
24 to make sure that I'm not mistaken.

25 MS. MURNAHAN: We do not doubt, Your Honor.

1 MS. WICK: Trust me, she would have heard better. I  
2 probably didn't hear it.

3 THE COURT: Do you agree with me, Ms. Murnahan, that  
4 Mr. Visser used that language?

5 MS. MURNAHAN: I did not hear it, Your Honor, but  
6 I --

7 THE COURT: Then let's make sure. Let's make sure  
8 because I don't want to -- if you're entitled to it -- and I'm  
9 not there yet, but -- Chanetta, is there a way to search?

10 THE COURT REPORTER: Yes, Your Honor.

11 (Record Read.)

12 THE COURT: Chanetta, you looked that up, and the  
13 first time Mr. Visser mentioned cleaning schedules, that was  
14 actually during Mr. Broome's examination; is that correct?

15 THE COURT REPORTER: Yes, Your Honor.

16 THE COURT: All right. So we know now that the  
17 topic of cleaning schedules came up in Mr. Broome's cross  
18 examination.

19 So Ms. Wick, the government's point is...

20 MS. WICK: Oh, that Mr. Broome opened the door to a  
21 question of what is cleaning schedules. Because Mr. Visser  
22 said, I don't think she knew anything about the fraud. But  
23 cleaning schedules was actually cleaning off cars that had  
24 been fraudulently sold and wiping out those dollar deals off  
25 their books.

1 MR. BROOME: Are you finished?

2 MS. WICK: Oh, yes, sir.

3 MR. BROOME: Cleaning a schedule would be -- I  
4 assuming, I guess, we could ask him some voir dire questions,  
5 or ask her -- if I am -- I am not an accountant. So I don't  
6 know what cleaning a schedule means. I would assume it would  
7 mean taking things out, like, if -- I don't know what it  
8 means. But I don't think going into the facts we're talking  
9 about ghost deals, which she said he never heard the term  
10 until they asked him, and dollar deals, I think they're trying  
11 to throw enough up on the wall that something sticks, and  
12 that's not what I am charged with.

13 THE COURT: Ms. Wick, let me ask you this. Part of  
14 the Court's concern, if we go down this road, is a 403  
15 concern. All right. It seems to the Court that if we're  
16 going to get into this, we're essentially going to have to  
17 have a minitrial on what the other fraud is that the  
18 dealership has been charged with. And it creates a great deal  
19 of confusion potentially, and the prejudicial effect of that  
20 confusion could, in this instance, far outweigh the probative  
21 value.

22 I am inclined to ask you not to go any further because  
23 of the Rule 403 considerations, but if you disagree with that,  
24 then help me understand how to do that and how we can protect  
25 the record.



1 MS. WICK: We had limited the scope of this case to  
2 only those 15 deals.

3 THE COURT: Right.

4 MS. WICK: The documents -- the dealership's  
5 accounting records, when they cleaned these schedules actually  
6 say, clean up of dollar cars. They actually reference the  
7 dollar cars.

8 MR. BROOME: None of this, incidentally, I have or  
9 were furnished.

10 THE COURT: And I am essentially going to have to  
11 give Mr. Broome an opportunity to create a defense to conduct  
12 with which Ms. Branch has not been charged.

13 MS. WICK: Yes.

14 THE COURT: So I don't know whether I have to give  
15 him additional, whether we have to take a break in the trial.

16 MS. WICK: No, I think we will not reference it. We  
17 will not reference it. To the extent that Your Honor -- would  
18 it be permissible -- let's just not reference it, and let's  
19 not make the issue.

20 MR. BROOME: That conduct has not been charged  
21 against anybody so far, right?

22 MS. WICK: You mean?

23 MR. BROOME: The dollar deals or the ghost deals?

24 MS. WICK: Let me think before I answer that. No.

25 THE COURT: Okay. Well, then I am still confused

1 because I thought you were explaining to me earlier that the  
2 dollar deals and the ghost deals were part of the separately  
3 indicted conduct. That's conduct that is all together  
4 separate from -- there's a third category. Okay. The  
5 financials that we've heard about, that's the conduct that has  
6 been charged already, and certain people have already been  
7 convicted and sentenced on that conduct.

8 MS. WICK: The financial documents that I am  
9 referring to was part of those cases. What I understand Mr.  
10 Broome was saying was that the specific dollar trades, ghost  
11 trades, that specific fraud has not been charged against the  
12 eight defendants that have already pled.

13 THE COURT: All right. If we're not going into it,  
14 I don't need to understand all of the specifics any further.  
15 Is that where we are?

16 MS. WICK: I will not go into it any further. I  
17 think that makes the most sense.

18 THE COURT: Good enough.

19 MR. BROOME: Judge, the only thing I would ask the  
20 Court to do is maybe instruct the jury that's a separate  
21 investigation that's not -- she asked a question, and I  
22 objected, and we're here. I think the jury is going to want  
23 to know whether you overruled or sustained.

24 THE COURT: I am just going to say on the record  
25 that I sustained the objection. They already understand that

1 there's a separate investigation. If I try to explain that  
2 there's another investigation, I think I probably will make it  
3 worse and just add to the confusion. So, you have the  
4 opportunity now to request that I do that, but my sense is  
5 that that will only amplify this and make it more confusing  
6 and make the jurors wonder what all the investigations are  
7 that were going on.

8 MR. BROOME: The only concern I have is they're  
9 going to think that I am trying to hide something by  
10 objecting.

11 THE COURT: Well, I have explained to you all how  
12 we're going to proceed based on Ms. Wick's response to my  
13 question. If we just get up and get going again and Ms. Wick  
14 starts with a new question, that may be the best way to  
15 proceed.

16 MR. BROOME: Yes, Your Honor.

17 THE COURT: All right.

18 (Conclusion of hallway conference.)

19 (A recess was taken at 2:42 p.m., until 2:50 p.m.)

20 (In open court. Jury not present.)

21 THE COURT: On the record.

22 Would you please state your full name for the record.

23 MR. MARIC: Alen, A-l-e-n. Maric, M-a-r-i-c.

24 THE COURT: All right. Ms. Marshall, do you  
25 represent Maric? Do you just represent the --

1 MS. MARSHALL: I represent the dealership. He is an  
2 employee of the dealership. He is the director of operations  
3 for Serra Nissan, Volkswagen, Serra Visser Nissan, and the  
4 Talladega Ford store, which we do not represent.

5 THE COURT: Okay.

6 Ms. Marshall and with one other attorney, the  
7 attorneys in this case have invoked the rule, which means that  
8 one witness cannot listen to what another witness says because  
9 you have a connection through work with some of the witnesses  
10 in this case. I just need to make clear to you that you may  
11 not communicate to anyone who could share information with a  
12 witness in this case anything that you hear in the courtroom.  
13 Do you understand that?

14 MR. MARIC: Yes, ma'am.

15 THE COURT: Thank you.

16 MS. MARSHALL: Thank you, Your Honor.

17 THE COURT: Tammi, we can bring the jury back in.  
18 Everyone can be seated except for counsel for the jury coming.

19 (In open court. Jury present at 2:53 p.m.)

20 THE COURT: I apologize for the length of the break.  
21 I spoke to the attorneys a few minutes, when I spoke with the  
22 attorneys, that means Chanetta is still working the entire  
23 time, and I need to give her a break to rest her fingers for a  
24 few minutes. So, we are ready to resume.

25 BY MS. WICK:

1 Q Mr. Visser, prior to the break, I believe you said that  
2 your best guess for the net in 2013 was \$1.8 million?

3 A I believe that's correct.

4 Q Was that just for the Serra Nissan store, or would that  
5 include Serra Nissan VW?

6 A That was just for Serra Nissan.

7 Q Just Serra Nissan?

8 A Just Serra Nissan, yes.

9 Q So over the break, I had some time to do some math  
10 because I cannot do that in my head. Two percent of that 1.8  
11 would be \$36,000?

12 A That's correct.

13 Q She got two percent of the net of Serra Nissan, Serra VW,  
14 and Serra Visser Nissan?

15 A Serra Nissan and Serra --

16 MR. BROOME: Your Honor, again, I object. What her  
17 salary was I really see is irrelevant. I could see the 2  
18 percent maybe of the extra money that one dealership got that  
19 they wouldn't have got, but I see no relevance of the 2  
20 percent of the whole net profit of both stores.

21 THE COURT: Overruled. You can deal with that if  
22 you need to in examination.

23 MS. WICK: Chanetta, I'm so sorry, could you read  
24 back the question?

25 (The last question was read.)

1 A Yes, Serra Nissan Volkswagen was one entity. So that 1.8  
2 included Volkswagen.

3 Q Oh, it did include Volkswagen?

4 A Oh, yes.

5 Q But it did not include Serra Visser Nissan?

6 A No.

7 Q So her salary, I think you said earlier, would have been  
8 \$100,000 in 2013, plus the roughly \$36,000 for the net of  
9 those two, and then whatever net Serra Visser Nissan got?

10 A Correct.

11 Q I think earlier you said that the accounting process at  
12 Talladega Ford has not yet been moved. So, Ms. Branch -- the  
13 Serra Nissan is still doing the accounting for that?

14 A There's some functions that are still being done at Serra  
15 Nissan in Birmingham, yes.

16 Q You still own a portion of Talladega Ford?

17 A Yes.

18 Q So she still technically works for you, doesn't she?

19 A She doesn't get a salary, but she is over some functions  
20 still at Talladega Ford, yes.

21 MS. WICK: No further questions, Your Honor.

22 THE COURT: Mr. Broome, do you have any follow up?

23 MR. BROOME: Just briefly, Your Honor.

24 RECROSS EXAMINATION

25 BY MR. BROOME:

1 Q There's been some mention and some showing of deal  
2 jackets. Did you actually ever see the 15 deal jackets for  
3 the 15 deals from Cullman that we've been talking about all  
4 day?

5 A Yes, I have.

6 Q Have you ever actually seen the 15 deal jackets that -- I  
7 believe it would be testified to -- Jeff Green or someone may  
8 have created for the Birmingham store?

9 A I had never seen them.

10 Q Do you know if they ever existed?

11 A I don't know if they ever existed.

12 Q But the Cullman ones did?

13 A The Cullman ones I saw, yes.

14 MS. WICK: Briefly redirect, Your Honor?

15 MR. BROOME: I hadn't finish yet.

16 MS. WICK: Oh, I'm sorry. I'm so sorry.

17 BY MR. BROOME:

18 Q We've been talking about the customer rebates or  
19 incentives. That's what that check in Exhibit 19 is for?

20 A Can I restate my prior answer?

21 Q Sure.

22 A I saw the 15 deals. I don't recall what the name on the  
23 deal jacket was. I don't recall if it is Serra Nissan or  
24 Serra Visser Nissan. I would have to look it up again. I saw  
25 the actual 15 deals, though.

1 Q You saw one set of jackets or one --

2 A Yes, and my best recollection is that they were Serra  
3 Visser Nissan deal jackets.

4 Q In the Cullman store?

5 A Yes.

6 Q Okay. But you only recalled seeing one set?

7 A Yes, I did not see two sets.

8 Q And you think it was the Cullman store?

9 A I am 90 percent sure it was the Cullman store.

10 Q Okay. Thank you.

11 Now, customer rebates or incentives go directly to the  
12 customers, right?

13 A That's correct.

14 Q So that money would have been money that the Cullman  
15 Nissan store would have either given the customer credit  
16 toward a down payment or actually given the customer money,  
17 right?

18 A That's correct.

19 Q Is that the two ways that customers get rebates or  
20 incentives?

21 A Yes.

22 Q You either add it on to my down payment or you just give  
23 me a check?

24 A Correct.

25 Q Okay. So to get Cullman back to even, the Birmingham



1 store had to pay Cullman?

2 A Correct.

3 Q It was also warranties probably, too, weren't they?

4 A I don't know how that would have been handled. I don't  
5 know. I am sure there was warranties sold, I just don't know  
6 how the accounting in that would have worked.

7 Q But if the warranty, you would agree with me, was sold on  
8 the car in Cullman, but RDR'd in Birmingham, Birmingham would  
9 get charged for the warranty?

10 A I believe Birmingham would have got charged for the  
11 warranty, yeah.

12 Q Speaking of RDR'ing, tell me again what that is.

13 A Retail delivery report. That's the slang we use to key a  
14 deal in and register that vehicle with the manufacturer.

15 Q And who would have been responsible for doing that at the  
16 Birmingham store?

17 A One of the sales managers.

18 Q In March of 2013, would have been whom?

19 A It could have been one of any people, Gerald Shepard,  
20 Abdul Mughal, Jeff Green, Scott Burton, anybody. Any of the  
21 sales managers. Maybe even some of the finance managers could  
22 have done it.

23 Q But it would not have been Kim's job to do that?

24 A No, no.

25 Q She wouldn't have done that?

1 A No.

2 MR. BROOME: That's all I have. Thank you, sir.

3 MS. WICK: Just briefly, Your Honor.

4 FURTHER REDIRECT EXAMINATION

5 BY MS. WICK:

6 Q Exhibit 24. Page 2, please. Can we call up the middle  
7 e-mail?

8 Mr. Visser, a minute ago you said that -- I think Mr.  
9 Broome asked you if you had ever seen the Birmingham deal  
10 jackets or if you even knew if they existed.

11 A Yes.

12 Q And I think you said you had never seen them?

13 A I don't think I have seen the Birmingham deal jackets. I  
14 saw the 15 deals, but I believe they were in Cullman deal  
15 jackets.

16 Q Okay. When he asked you if you knew they existed, what  
17 did you say?

18 A I said I don't know if they exist or not.

19 Q In the e-mail that Ms. Branch sent you on June 3rd, when  
20 she said Jeff also created a Birmingham deal jacket for each  
21 of these deals so we would have it if they ever request a deal  
22 to be pulled, what was your understanding after this e-mail  
23 whether Birmingham deal jackets existed?

24 A It was my understanding that one was created.

25 Q Okay. From Ms. Branch? The e-mail from Ms. Branch?

1 A I learn that from the e-mail -- from this e-mail from Ms.  
2 Branch, yes.

3 MS. WICK: No further questions, Your Honor.

4 MR. BROOME: I don't have anything else, Your Honor.  
5 Thank you.

6 All right, Mr. Visser, you may step down. Thank you.

7 MS. WICK: Your Honor, the government would call  
8 Forest Housner.

9 THE COURT: All right.

10 THE COURTROOM DEPUTY: Will you step into the box  
11 and remain standing, please. Will you raise your right hand.

12 Do you swear of affirm to tell the truth, the whole  
13 truth, and nothing but the truth so help you God?

14 THE WITNESS: I do.

15 THE COURTROOM DEPUTY: Thank you. Please be seated.  
16 Will you state your first and last name.

17 THE WITNESS: Forest Housner.

18 THE COURTROOM DEPUTY: Will you spell your first and  
19 last name.

20 THE WITNESS: F-o-r-e-s-t, H-o-u-s-n-e-r.

21 THE COURTROOM DEPUTY: Thank you.

22 DIRECT EXAMINATION

23 BY MS. WICK:

24 Q Good afternoon, Mr. Housner. Could you tell the jury  
25 where you are from?

1 A I live in Clanton, Alabama.

2 Q And where did you go to school?

3 A I am sorry?

4 Q I'm sorry. Where did you go to school?

5 A High school?

6 Q Sure.

7 A Howell, Michigan.

8 Q Where did you go to college?

9 A I did not complete college, but I took classes at  
10 University of Michigan.

11 Q Okay. Can you tell the jury a little bit about your  
12 background in the car industry?

13 A I started in parts and service in 1976. That's what I  
14 have done. Since then, parts and service in various different  
15 manufacturers and stores up to, probably, January or February  
16 of 2012, I went from fixed operations director, which is parts  
17 and service, to director of operations, which is parts,  
18 service, facilities, buildings, and expense control.

19 Q And I think you said that happened in 2012. What job was  
20 that that you transitioned into as director of operations?

21 A From parts and service director to director of  
22 operations.

23 Q Was it at the same dealership?

24 A It was a group I had -- at that time at four dealerships.

25 Q Okay. Let me -- I am sorry, I am making this more

1     confusing than it needs to be. How many prior dealerships  
2     have you worked at?

3     A     Oh, I -- probably 15.

4     Q     15. If you need water, we have it. I understand you  
5     said that some of your prior positions where you were the  
6     fixed ops manager, which had to do with parts and service?

7     A     Yes.

8     Q     Would you say that your -- because I don't want to  
9     necessarily -- I understand you have a lot of experience. I  
10    don't necessarily want to cover all 15 years. But would you  
11    say that most of your experience in those 15 years was in the  
12    fixed ops parts and service side or in the sales side of the  
13    dealership?

14    A     It was all parts and service.

15    Q     Prior to coming to work for Serra Nissan in Birmingham,  
16    how much experience did you have on the sales side of the  
17    dealership?

18    A     I had none. I never worked -- I have never sold a car.  
19    I have never been a sales manager. I have never been a  
20    finance and insurance manager in any of the positions. In  
21    sales, I have not held.

22    Q     Can you explain -- let me back up. When did you go to  
23    work for Serra Nissan in Birmingham?

24    A     It was approximately October of 2011.

25    Q     And do you remember when you left?

1 A Early February of 2015.

2 Q Okay. While you were at Serra Nissan, during the entire  
3 time, was your position director of operations?

4 A No, in the beginning, it was parts and service director  
5 or fixed operations director.

6 Q So at some point, you became the director of operations  
7 at Serra Nissan?

8 A Correct.

9 Q Do you remember when that was?

10 A Yes, that approximately was January or February 2012.

11 Q I understand now. So October 2011, you started in the  
12 other position, then you became director of operations in  
13 January or February of 2012?

14 A After I opened the Serra Visser Nissan in Cullman, which  
15 I spent a couple of months to three months up there in  
16 Cullman, getting the store, the building up and running, when  
17 I got back, that's when Randy Visser asked me to take care of  
18 the facilities at all locations, along with helping him with  
19 expense control.

20 Q Can you explain to the jury what your day-to-day  
21 responsibilities were as the director of operations starting  
22 in January or February of 2012?

23 A Well, I still worked with parts and service. So that was  
24 a large portion of it. I met with my service managers. The  
25 locations were an hour apart. I mean, Serra Nissan and Serra

1 Volkswagen were together. Serra Visser Nissan was an hour  
2 north. Serra Honda Sylacauga was an hour southeast. So I  
3 wouldn't be at every store every day. I would divide it by  
4 week and spend a lot of time with the service managers. All  
5 of my service managers at that time were new. They were --  
6 none of them had held positions as service managers before, so  
7 they were green and that took a lot of work. My parts  
8 director was experienced, and he was a lot of help. I did not  
9 have to spend as much time in parts that I did in service.  
10 Then the facility being new in Cullman, I still had a lot of  
11 time that I spent getting that facility -- we had got started.  
12 But to find out I need this, this needs more computers. We  
13 needed to have a couple more offices built. So those things  
14 took up time, as well as we immediately had to start on  
15 building a new facility for Cullman. We were in a lease  
16 facility, so we had 24 months to be in a new building.

17 Q Let me ask you, if I could ask you very specifically,  
18 what did you do for Serra Nissan Birmingham starting in  
19 January and February 2012, when you were at the Birmingham  
20 store?

21 A Worked with the parts and service. That facility had a  
22 lot of upkeep. It was an old building -- it was a 30-year-old  
23 building that had not been kept up. So there were things that  
24 needed to be addressed in that. And then I also started  
25 working with some other receivables that Randy had asked me to

1 work with. I worked with the warranty receivable in service,  
2 but his biggest concern was contracts and transits. So I  
3 started working with that schedule.

4 Q Prior to those things that you were saying, the contracts  
5 and transit and the receivables, had you dealt with that  
6 previously in your job?

7 A No.

8 Q Did you know how to do any of that?

9 A No.

10 Q Was there somebody at the dealership who kind of trained  
11 you or helped explain to you the receivables in the contract  
12 and transit?

13 A Randy Visser.

14 Q Was there anyone else who helped kind of explain to you  
15 the accounting process?

16 A Kim Branch helped me a lot with the schedules. I didn't  
17 have an accounting background. She was very good at breaking  
18 them down into more layman's terms where it is easier for me  
19 to understand.

20 Q How often did you meet with her for her to kind of  
21 explain the accounting process at Serra Nissan?

22 A At that time, maybe once or twice a week, very short  
23 meetings.

24 Q Well, let me be clear, I think you said you started --  
25 you took over as director of operations in January and



1 February of 2012. Ms. Branch wasn't an employee then, was  
2 she?

3 A No, you are right. I worked with another controller who  
4 was just awful.

5 Q I am sorry.

6 A She didn't help me much at all.

7 Q So do you remember when Ms. Branch started?

8 A Not exactly.

9 Q Okay. At some point, Ms. Branch starts after you, let's  
10 just go with that. When you were saying, she would help you  
11 and have conversations, how often do you think you had those  
12 discussions with her after she started where she kind of  
13 helped explain the accounting to you?

14 A I think it was a couple of times a week. I mean, I was  
15 out of the store a lot, so I couldn't be at the other  
16 locations.

17 Q When you were present in the Birmingham store, how often  
18 were you having these meetings with her; daily when you were  
19 there or weekly?

20 A Not daily, but more often than weekly. It was kind of as  
21 needed. I only was required to go over the contracts and  
22 transits twice a week. So, there was no reason for more often  
23 than that.

24 Q Okay. Do you remember what your pay plan was in March  
25 2013?

1 A No.

2 Q Without knowing numbers, do you know if it included some  
3 percentage of the net?

4 A I eventually was given a percentage of the net, but I  
5 could not tell you the month and date that that happened.  
6 That's not how it was when I started. It was some time past  
7 before that happened.

8 Q Could you describe your relationship -- who did you  
9 report to at the dealership in Birmingham?

10 A Randy Visser.

11 Q Actually, did you report -- who did you report to for all  
12 the dealerships that you were the director of operations for?

13 A Randy Visser.

14 Q Could you describe your relationship with him?

15 A It was good. When he offered me or asked me to take on  
16 more than just fixed ops, I told him that I did not know  
17 anything about sales and I didn't want to. And I remember him  
18 saying, don't worry about it, you don't have to because I am  
19 an expert on it. And I felt he was. I totally felt he was.

20 Q How often did Mr. Visser e-mail you?

21 A Nonstop. I mean it was his -- some of them were  
22 meaningless, some of them I didn't know why he sent them to  
23 me, but I would get a lot. Early on, I would ask him about  
24 why did you send this? He said, I don't know, just ignore it.  
25 It's nothing.

1 Q How often did he copy Ms. Branch on those e-mails to you?

2 A I think we were sent the same e-mails quite a bit.

3 Q Did he ever text you?

4 A Yes.

5 Q How often?

6 A Not as much. Five or six times a week. I'm not very  
7 tech savvy. I never had an e-mail before I started there. I  
8 am all paper, handwritten, take it somewhere and give it. And  
9 I don't know how to text, in all honesty.

10 Q How did you communicate back to Mr. Visser?

11 A I would try to call him because I felt an e-mail was a  
12 one-sided conversation and not -- some of those e-mails are  
13 very vague. I would not understand them, and I wanted  
14 clarity. So, I would always try to call him. If not, I would  
15 try to communicate with him via e-mail.

16 Q When you were at the Birmingham store, how often was he  
17 present at the store?

18 A It varied through the seasons. There was times of the  
19 year that he was there. He was very much a family man when  
20 his kids were out of school. He would spend a lot of time  
21 with them. So in the summer months, he will not be there.  
22 And he liked being there in the morning for a couple of hours.  
23 But he was always available. I mean, he always -- up until  
24 the end when I quit and why I quit, he directed me through  
25 everything, and then he just wasn't there anymore, and I

1       couldn't get ahold of him. I really didn't know what to do.

2       Q     Do you remember conversations -- excuse me, in March  
3       2013, what conversations do you remember having with Mr.  
4       Visser about hitting the dealer volume bonus incentive at the  
5       end of the year?

6       A     I remember him telling me that he was going to use the  
7       Cullman car deals to meet the Birmingham objective, and that  
8       -- I don't know his exact words, but it was do you know how to  
9       do it? I said I know how to do it. And he was asking me,  
10      telling me to get this done.

11      Q     Do you remember what instructions he gave you?

12      A     No. They would have had to have been detailed because  
13      other than the RDR on the cars, I don't know what else needed  
14      to be done.

15      Q     Mr. Housner, I have handed you what has been previously  
16      admitted as Government's Exhibit 40. When you get a moment,  
17      can you just take a look at those documents and tell me if you  
18      recognize them?

19      A     This one. There's actually two.

20      Q     Let me break it up. Do you recognize page 1?

21      A     Yes, you showed it to me a week ago.

22      Q     Do you recognize page 2?

23      A     No.

24      Q     So let's just talk about page 1. This has already been  
25      admitted.

1 MS. WICK: Permission to publish, Your Honor?

2 THE COURT: Yes.

3 BY MS. WICK:

4 Q Mr. Housner, can you see that on your screen?

5 A Yes.

6 Q Do you recognize the (256) number at the top?

7 A I don't know what the number is. I know (256) was  
8 Cullman, and I know that's my handwriting.

9 Q That's your handwriting?

10 A That is my handwriting.

11 Q Okay. Do you recognize that document, what it is?

12 A It's a document explaining what to do for the vehicles  
13 that were going to be reported in Birmingham from Cullman.

14 Q Do you remember seeing that document back in March 2013?

15 A No, I don't.

16 Q Do you know who wrote that information?

17 A It looks like documents that I would get from Randy  
18 Visser, the bold the numbering. It looks like it's  
19 something -- it looks very similar to a lot of the paperwork  
20 when everybody was explaining to someone the process or  
21 something, that looks like his documents.

22 Q Would you say it's his style of writing?

23 A Yes. It's definitely not mine. It would be handwritten  
24 and would not be as proper.

25 Q Do you understand the instructions that are contained in

1 here?

2 A 60, 70 percent of it. I mean, some of the stuff, it  
3 looks like something an F & I manager would deal with. I  
4 never worked in F & I. So I...I pretty much know what it's  
5 saying.

6 Q Do you know whether it's -- earlier, you said you had a  
7 conversation with Mr. Visser about using Cullman's deals for  
8 Birmingham in March 2013.

9 A Yeah.

10 Q Can you tell if this is related to that?

11 A Oh, absolutely.

12 Q Okay. And I think you said that during your conversation  
13 with him that he told you that we were going to do this?

14 A Yeah, he told me that he wanted this done, and he also  
15 told me, he knew how to do it. I mean, he knew I didn't know  
16 how to do it.

17 Q Do you remember whether you received -- do you remember  
18 receiving these instructions from Mr. Visser?

19 A No, I don't. I would get a lot of stuff from him. And  
20 most of the stuff would -- stuff to do with sales. It would  
21 pass right through my desk. I didn't know it, and it wasn't  
22 my area. I would worked off a list that I made every day, and  
23 I would try to get it off my list as quickly as possible and  
24 to the right person. I would ask him like where -- no, I  
25 would always ask him where it went to because my concern was

1 when I get something to the wrong person.

2 Q I know the type on that is really tiny, so we're going to  
3 call out, at the bottom of that, there's like a little footer,  
4 and unfortunately, it's at the very bottom. And it's actually  
5 upside down.

6 So you may have to turn your paperwork upside down.

7 Can you call it all the way from the left?

8 A Yes, that's my fax number.

9 Q I am going to read it because it's very hard for us to  
10 change the direction. But the upside down number is 205 --  
11 I'm going to try to read it -- 856-6274. You said that's your  
12 fax number?

13 A That's my fax number.

14 Q Okay. Do you remember faxing this document to the  
15 Cullman store?

16 A No.

17 Q After Mr. Visser told you what you were going to do with  
18 the Cullman sales and moving them to Birmingham, did you have  
19 any other conversations with him?

20 A I had conversations with him every day that he was there,  
21 but...

22 Q I should have been more specific. About the shifting?

23 A I am sure that I did. I mean, I didn't know that there  
24 would have been a lot of things that had been done, and I am  
25 sure that he gave me several other documents. I do remember

1 him saying, telling me that Jeff Green would do the deal  
2 jackets. I do remember him saying that. I don't know why  
3 that stands out. I worked with Jeff Green on the contracts  
4 and transits. I don't know if --

5 Q Okay.

6 A -- that's why, I don't know.

7 Q I'm sorry, I did not mean to interrupt you. Do you  
8 remember having conversations with Ms. Branch about the  
9 shifting -- shifting the Cullman sales to Birmingham?

10 A I don't remember actual conversations with -- I know that  
11 we talked about it.

12 Q Do you remember any conversations with Gerald Shepard at  
13 the dealership regarding the shifting of sales?

14 A Gerald Shepard, that's the one thing that I do know about  
15 to do this process was reporting of cars, and Gerald Shepard  
16 reported cars. I am sure I went to Gerald to tell him to  
17 report the cars. He is the one that I knew did that.

18 Q Do you remember any of the actual conversations that you  
19 had with Mr. Shepard?

20 A No, it was a long time ago.

21 Q I understand. Did you have any conversations with a man  
22 at the Cullman store named Harold Yelverton?

23 A Harold was the GM of the store. I had went to that  
24 store. Randy did not. And yes, I would have gone over --  
25 whenever I went to that store, which is at that time at least



1 twice a week, I would ask Randy, do you have anything for me  
2 to take to the Cullman store? I am going to the Cullman  
3 store, do you have anything?

4 Q I am sorry. Let me be more specific. Did you ever have  
5 conversations with Mr. Yelverton about the shifting of sales  
6 in March 2013?

7 A I am sure I did. I don't remember the conversations, but  
8 I was the one that would go to Cullman, and he was the GM. He  
9 would have to be involved.

10 Q Do you remember in June 2000 -- I am not going to guess.  
11 Do you remember e-mails between you, Mr. Visser, and Ms.  
12 Branch in June 2013?

13 A I remember seeing this e-mail.

14 Q I apologize, I forgot when I handed it to you to say that  
15 I handed you what was previously marked and admitted as  
16 Government's Exhibit 24. If you look at the front of the  
17 folder, is that what you are looking at, Government's Exhibit  
18 24?

19 A Yes.

20 Q So, looking at those e-mails, do you remember getting  
21 those e-mails in June, 2013?

22 A I remember the first one. It is one of those e-mails  
23 that I chose to ignore.

24 Q Why did you choose to ignore it?

25 A It talks about booking deals in Reynolds in accounting.

1 I would not book deals in accounting. So, typically any time  
2 I got an e-mail, I didn't totally understand it. If I saw two  
3 names up there, then I assumed it was for the other one.  
4 Because of the word "accounting," I would ignore it. Many  
5 times he would, when he'd do them below, he would actually put  
6 my name, and say, Forest, and then he would say something he  
7 wanted me to do.

8 Q So you didn't think that was addressed to you in terms of  
9 something to be done?

10 A No.

11 Q Who, to the best of your knowledge at the Serra Nissan  
12 dealership, did have the ability to book deals in accounting?

13 A I know that Kim could, and there may be other people. I  
14 would think there were -- I would think Melissa Gates was like  
15 an assistant office manager, I am guessing. I mean, I don't  
16 know.

17 Q Let me phrase it better. Did you know for sure whether  
18 Ms. Branch had the ability to book the deals in accounting?

19 A Yes, yes.

20 Q Did you know for sure whether anyone else in accounting  
21 had the ability to book deals?

22 A No.

23 THE COURT: Mr. Housner, just so you'll know, if you  
24 can't recall something or you don't know, it's perfectly fine  
25 for you to say, I don't know, or I can't recall. Please don't

1 guess at any answers to questions that Ms. Wick or Mr. Broome  
2 may present to you. Okay?

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

5 MS. WICK: Thank you, Your Honor.

6 BY MS. WICK:

7 Q Did you ever have a conversation with Mr. Visser about  
8 whether it was okay to pool sales?

9 A Pool sales -- you mean this process right here, pool  
10 sales from one?

11 Q Good point. What is your understanding of what the term  
12 "pooling of sales" means?

13 A It's not a term that I hear used throughout. Is that  
14 what it is? Randy never said the word "pooling sales" ever to  
15 me.

16 Q Okay. How about shifting sales. Shifting sales --  
17 shifting of sales from one dealership to the other?

18 A Yeah, yeah, okay, yeah.

19 Q Did you ever have -- prior to March 2013, did you ever  
20 have any conversations with Mr. Visser about shifting sales?

21 A Yes. I asked him if it could be done. There was a  
22 question because it can be done in parts, and it was just done  
23 in parts. Nissan parts and service rep had reminded or  
24 suggested to my parts director that they shifted Birmingham's  
25 parts sales to Cullman because Cullman was tied in a contest

1 or a trip, and to make sure they got over -- if they took the  
2 sales from Birmingham and put them in Cullman, it would assure  
3 that they would win the contest.

4 Q Do you know if that parts incentive process had anything  
5 to do with the sales incentive process?

6 A Were they related?

7 Q Yes.

8 A Not to my knowledge. I asked Randy, it was a question,  
9 can you -- can you move sales? And I didn't even tell him  
10 why. The reason was because -- for me, it was because we just  
11 did it in parts and were told we could do it in parts, and it  
12 was -- occasionally, I would just ask Randy questions about  
13 sales.

14 Q What was his response when you asked if you could shift  
15 sales like that on the sales side like you did in parts?

16 A It was something like, yes, but it's complicated.

17 Q I am handing you --

18 MS. WICK: Permission to approach?

19 THE COURT: Granted.

20 BY MS. WICK:

21 Q -- what's been previously marked as Government's Exhibit  
22 25, and actually, it's already been admitted. But can you  
23 just take a look at that document and tell me if you recognize  
24 it.

25 A Yes.

1 Q What is that?

2 A It's like a closing statement after the Nissan auditor  
3 has been there for car deals.

4 Q When was that closing meeting for that audit?

5 A March 15th.

6 Q Of what year?

7 A 2013, I am sorry.

8 Q Okay. Were you present at that closing meeting?

9 A I believe I was. Yes, because the only thing I remember  
10 is that number two in the recommendations of the vin, the zip,  
11 we'll look up because I wasn't aware of that before.

12 Q Do you remember what the kind of the nature of -- what's  
13 the purpose of that audit closing meeting?

14 A It's to go over things that they found in the audit, kind  
15 of a training. My understanding was a training to know what  
16 to look for to improve.

17 Q To improve what?

18 A Improve your reporting and your incentive charge backs.

19 Q So, it was your understanding that the purpose of that  
20 was how to correctly RDR or report in order to avoid charge  
21 backs?

22 A Yes.

23 Q Okay. Can you tell me, looking at that closing meeting,  
24 how many times the auditor told you -- and who else was  
25 present with you? You, the auditor, and?

1 A Randy Visser.

2 Q Can you look at that closing report and tell me how many  
3 times the auditor told you and Mr. Visser how important it was  
4 to accurately report the RDR information? You don't have to  
5 give me an exact number.

6 A I mean, I see it talked about fleets and -- and most of  
7 it type C and D went over my head because I never reported,  
8 and I just I didn't even notice things -- different reporting  
9 types existed. I knew about the rental cars. I talked to  
10 Jeff about the vin, zip. That's mainly what I remember  
11 because I thought it was a great tool that I didn't know  
12 existed.

13 Q Is it fair to say -- and I want you to go from your  
14 recollection, do you remember Mr. Creecy, at that meeting,  
15 telling you and Mr. Visser that it was important to accurately  
16 report the RDR information when it was submitted to get  
17 incentives?

18 A Yes, it's very important.

19 Q The date of that meeting you said was March 15, 2013,  
20 right?

21 A Correct.

22 Q If I understood you earlier, you had conversations with  
23 Mr. Visser in March 2013 about shifting the sales from Cullman  
24 to Birmingham to hit the incentive?

25 A Correct.

1 Q Do you remember whether your conversation with Mr. Visser  
2 was before that audit closing meeting or after the audit  
3 closing meeting?

4 A No, I don't.

5 Q At the time that Mr. Visser told you that you were going  
6 to shift the sales from Cullman to Birmingham, what was your  
7 understanding of whether that was an acceptable practice to  
8 Nissan?

9 A I knew it was for parts. But my car deals, I just -- I  
10 felt Randy knew what he was doing. I believe -- Nissan had  
11 told me themselves that he was their best dealer. I really  
12 felt Randy knew what he was doing.

13 Q At the point that you became aware that Mr. Green was  
14 going to have to create false Birmingham deal jackets as part  
15 of this process, what was your understanding of that point,  
16 whether this was an acceptable practice?

17 A It didn't seem correct to me.

18 Q Why?

19 A I just didn't think you would have to redo a bunch of  
20 documents and parts to do this, and parts -- you just reported  
21 them. You just sold the parts to -- like I take Nissan parts,  
22 and I just sold them to the Cullman store. You didn't have to  
23 recreate anything or do anything.

24 Q So you didn't have to create any false documents in order  
25 to pool parts just for simplicity for the parts incentive?

1 A Correct.

2 Q Do you remember in October of 2013, a search warrant  
3 being executed at the Serra Nissan dealership in Birmingham?

4 A Yes, I wasn't there when it happened, but I actually  
5 heard about it the next morning.

6 Q Do you remember hearing about -- did you have any  
7 conversations with anyone about anything that was taken off of  
8 Mrs. Branch's desk during the search?

9 A Could you repeat that?

10 Q Do you remember having any conversations with anyone  
11 about documents that were taken off of Ms. Branch's desk  
12 during the search?

13 A I remember after the search, there were some current  
14 deals that were still in the process of being worked that Kim  
15 needed back so she could finish, but they were never taken off  
16 her desk. That part of it, I don't remember. I just assume  
17 they were current stuff that was still being worked on.

18 Q Do you remember in June 2014, do you remember becoming  
19 aware of a grand jury subpoena that had been issued to the  
20 dealership?

21 A I never knew the subpoenas were issued. I know they were  
22 looking for deals at different times. But no one -- that  
23 would -- they were probably served to the company's lawyer.

24 Q Okay. I don't want you to tell me any conversations that  
25 you had with any of those attorneys.



1 A And I didn't. I wouldn't talk to those attorneys. But I  
2 mean, the word "subpoena," I was never told, hey, we got a  
3 subpoena for those deals. It was like, we needed to turn in  
4 some deals to the government. And I had been told to help  
5 with anything that the government wanted.

6 Q Do you remember when you became aware -- well, let me  
7 rephrase that.

8 Were you ever aware that the government had requested  
9 those 15 Birmingham deal jackets that were created as part of  
10 the shifting sales?

11 A Yes.

12 Q When did you become aware of that?

13 A I couldn't give a date. I would be wildly guessing, and  
14 I am not going to.

15 Q As the Court said, please don't guess.

16 Do you remember having conversations with anyone at  
17 the dealership -- not attorneys -- anyone at the dealership  
18 about the government's request for those 15 Birmingham deal  
19 jackets?

20 A I never came looking for the deals. It seems like there  
21 was one or two that they were struggling to find. I think  
22 everyone was looking.

23 Q Do you know if they ever found those?

24 A Yes, to my knowledge, they did. I think they found a  
25 couple that were missing in an F & I manager's office, or

1 something.

2 Q Do you know if those deals that they found were, in fact,  
3 the 15 Birmingham deal jackets that were related to the  
4 shifted sales?

5 A I thought they were.

6 Q Again, I am going to -- if you don't know -- do you know  
7 whether the deals they found were the 15 Birmingham deal  
8 jackets that were created for the deals that we've been  
9 discussing, the shifted sales?

10 A I can't say I don't want to -- I was asked not to. I  
11 don't want to do that.

12 THE COURT: Sir, that's fine. If your answer is I'm  
13 not sure, that's fine.

14 THE WITNESS: I am not sure.

15 BY MS. WICK:

16 Q Mr. Housner, are you familiar with the dealership's sales  
17 and service agreement?

18 A I have never seen this one for the Nissan, but I know  
19 what the sales and service agreement is.

20 Q What is it?

21 A It's an agreement that every store has between the  
22 dealership and the manufacturer. It usually has a term on it.  
23 They really vary quite a bit by manufacturers. I worked  
24 through many manufacturers. Some of them, it's just an  
25 ongoing agreement that will just last forever. They just sign

1 it every few years. Those are more on a domestic side. On  
2 the foreign side, they generally can be shorter, one year to  
3 five years. And it has all the rules that you want to abide  
4 by, facility size -- just guidelines, just guidelines for what  
5 a dealer has to do.

6 Q Okay. Do you remember at some point federal agents  
7 coming to your house to talk with you?

8 A Yes.

9 Q After that, did you have conversations with Mr. Visser?

10 A Yes.

11 Q What conversation with Mr. Visser -- what did you talk  
12 about with Mr. Visser after the agents came to your house?

13 A He had sent an e-mail that said if anyone comes to your  
14 house or just tries to talk to you, to let him know and that  
15 he had an attorney for us, the employees.

16 Q Okay. Did he tell you anything else?

17 A He said we shouldn't talk to them without an attorney.

18 Q Do you remember receiving a target letter from the  
19 government?

20 A No.

21 Q At any point, did you become aware that a target letter  
22 had been sent to you?

23 A My attorney --

24 Q I don't want you to tell me about conversations with your  
25 attorney. If you -- do you remember when you became aware --

1 at some point -- I don't want to you tell me about  
2 conversations with your attorney.

3 At some point, did you become aware that a target  
4 letter had been sent to you?

5 A Yes.

6 Q Okay.

7 A Well, no, I am sorry. I became aware that I had become a  
8 target, but I didn't know anything about a letter.

9 Q Okay. Have you ever read a target letter addressed to  
10 you from the government?

11 A No.

12 Q At some point, did you come in and meet with the  
13 government?

14 A Yes.

15 Q Okay. Why?

16 A I had always wanted to. It's hard because I can't say.  
17 My attorney --

18 THE COURT: That's all right. So if you were  
19 meeting because of some advice that your attorney gave you,  
20 you do not have to discuss any advice that you received from  
21 an attorney.

22 BY MS. WICK:

23 Q Let me rephrase. What was the purpose -- what did you  
24 understand the purpose to be of meeting with the government?

25 A I wanted to cooperate with the investigation. I always

1 had wanted to. I was somewhat disappointed when the agents  
2 never came back.

3 Q When you came in to meet with the government, do you  
4 remember if there was a document or an agreement that dictated  
5 the terms of that meeting?

6 A I remember there were several pages I signed. Is that  
7 what you are...

8 Q Do you remember a proffer letter or a letter that you  
9 signed prior to that meeting?

10 A Yes.

11 Q Okay. Do you remember the terms of that letter?

12 A Yes.

13 Q What did you understand the terms of that letter to mean?

14 A That I was speaking to you of my own free will, and that  
15 if I had done anything wrong, I could be charged.

16 Q What did you understand that you would get in exchange  
17 for cooperating with the government?

18 A I would get nothing.

19 Q Have you been charged in this case?

20 A No.

21 Q What is your understanding of whether you could still be  
22 charged in this case or not?

23 A I understand I could be charged.

24 Q Okay. How many times did you meet with the government?

25 A Three.

1 Q What instructions did the government give you during  
2 those meetings?

3 A Repeatedly, tell the truth, tell the truth, tell the  
4 truth.

5 Q Did the government explain in any way what would happen  
6 if you came in and lied in any way on the stand, either to the  
7 government or to a defense counsel?

8 A That I would be committing perjury.

9 Q Okay. Let me ask you one more question. Was there  
10 anyone at the dealerships that you worked with that you had a  
11 really close relationship with that you mentored?

12 A Yes.

13 Q Who was that?

14 A Shantelle.

15 MS. WICK: No further questions, Your Honor.

16 THE COURT: Before we do cross examination, let's  
17 take a quick five-minute break, please. And I will advise  
18 members of jury, please not to discuss any of the testimony  
19 that you've heard so far.

20 (A recess was taken at 3:56 p.m.)

21 (The following proceedings were held in the hallway, out of  
22 the hearing of the jury:)

23 THE COURT: I have been listening to Mr. Housner's  
24 testimony. I need to have a sense from counsel -- Ms. Wick,  
25 earlier today you advised me that Mr. Housner may have

1 problems with his memory because of some health issues that he  
2 has had. I need to understand from counsel what Mr. Housner's  
3 -- how Mr. Housner's demeanor and memory today compares with  
4 what his demeanor and memory may have been five months ago, a  
5 year ago, back in 2013.

6 Mr. Bell, I would venture to guess that you didn't  
7 know Mr. Housner in 2013. When did you first become  
8 associated with him?

9 MR. LANCE BELL: In March of this year. I will say  
10 when I met with him then, and in the first time -- I don't  
11 have my file with me -- and we met in their office, I would  
12 say Mr. Housner was a lot sharper. He could remember things a  
13 lot better. He could critique little things that today he  
14 can't do.

15 We met last week in the U.S. Attorney's Office, and  
16 you know, he wasn't as clear about certain things. And then  
17 yesterday is when we met with him Friday -- I met with him in  
18 my office Friday, and I was asked, I --

19 THE COURT: And I don't want to know any --

20 MR. LANCE BELL: I know, but I carried him --  
21 because he was so nervous, I carried him up to our state  
22 courthouse because nobody was there, it was a Friday  
23 afternoon. State judges, they've gone on Fridays after lunch.  
24 There is nobody around. So, I walked down there, and we just  
25 sat in there, and I stayed there two hours, and I was asking

1 him questions, like both sides, just a little bit to --

2 THE COURT: -- prepare him?

3 MR. LANCE BELL: -- prepare him, and I cut it short.

4 I was like, well, he is just having a bad day or something --  
5 yesterday we met at 5:30 in the U.S. Attorney's Office, and  
6 within a couple of minutes in there -- I don't know if that's  
7 the latest, but I've been around him. I wrote a letter, it  
8 was to you, Jennifer (AUSA Murnahan), and I said, something is  
9 not right. It's just -- and then I got him to -- I called him  
10 outside. I actually -- Katie, the IRS agent, I think, picked  
11 up the same thing -- and she was writing a letter to the FBI  
12 or to Jennifer too. So there's two separate people that are  
13 sitting there looking at it.

14 I had experience in that with my mother, and that's  
15 where I started picking up on it yesterday. I think she had a  
16 family member that she had been through the same thing. So I  
17 called Amanda out in the hallway, and I said something is just  
18 not right. And I knew he had had a lot of medical -- he had  
19 spent four days in hospital, got out, four days back in the  
20 hospital. He has lost 30 pounds. I know his strength is not  
21 where it was. He don't look as good as he did. He is  
22 prepared to get his strength up to have colon surgery where  
23 they're going to take out a section of his colon. He's got a  
24 perforated colon.

25 He has been on some pretty heavy medicine during a lot



1 of this. And he's had some different testing. I don't know  
2 if that's put an effect on him or what's really happened. But  
3 I got him -- he couldn't remember his wife's number. So  
4 Amanda walked him downstairs to his car. And I got his number  
5 and talked him into letting me call his wife.

6 I talked to her for just a minute, and told, first, he  
7 is okay. I am not calling because something is wrong, but let  
8 me talk to you for a minute. Have you noticed anything? And  
9 then she was real quiet. And she said, well, Forest is like a  
10 recluse in the house. He just don't like to go anywhere now.  
11 He don't like to do anything. She said, I am noticing things  
12 that he just don't remember or recall some simple things. She  
13 says, but I haven't said a word to nobody. She said I have  
14 not said a word to Forest or the children or not anybody.

15 I will say this , this morning, that I think he was a  
16 little bit better, but as the day goes on as he sat there, I  
17 could see a different Forest from ten o'clock this morning  
18 until right now.

19 THE COURT: All right. I don't think it's fair, in  
20 this proceeding, to have the jury have the impression that the  
21 Mr. Housner they see right now is the Mr. Housner who was  
22 Randy Visser's right-hand man, for all intents and purposes,  
23 from everything I have heard in these proceedings. And that  
24 he is the person who was communicating with Ms. Branch.

25 MS. WICK: I am sorry. I didn't mean to interrupt.

1           THE COURT: I am curious to hear what you think, but  
2 please go ahead.

3           MS. WICK: I think we have told him in every one of  
4 our meetings -- and I was glad you said it on the record,  
5 because we have told him over and over and over, do not guess,  
6 if you don't know the answer, say, I don't remember, I don't  
7 recall. I think there was a significant portion of his  
8 testimony that he legitimately recalled, that he remembered  
9 conversations. And there was value in the sense of he was a  
10 participant that could contribute information to the jury.

11           I don't know what the best thing is in terms of like a  
12 curative instruction, but I would hate for the value of what  
13 he could remember to be lost because there were so few people  
14 in some of those discussions, in some of those meetings, and  
15 some of them were one on one, some of them were his word  
16 against the other person -- I just don't think it would be  
17 fair to the government, or to Mr. Housner, for what he did  
18 remember and what he did testify to under oath for that to be  
19 not considered by the jury. I know that's a delicate balance  
20 for the Court.

21           THE COURT: Mr. Broome.

22           MR. BROOME: I am more concerned about the damage to  
23 Ms. Branch. I plan on asking him about his health problems,  
24 and I will do it in a professional and gentlemanly manner. I  
25 do not plan on beating the table and going after him.

1 THE COURT: I would not expect you to.

2 MR. BROOME: Well, I might to somebody, maybe later  
3 on with some of your other witnesses. I am not going to say  
4 that I won't. But not to him, because number one, that's not  
5 going to endear to these 12, 14 folks. Over here, and number  
6 two, that's just not the way to treat a person. Although we  
7 are lawyers, we are still people. But I do have some  
8 questions to ask him, and I would not think the cross would be  
9 more than 15, 20 minutes.

10 MR. LANCE BELL: I will say this about Mr. Housner,  
11 he is going to try to mask his health problems to a certain  
12 degree.

13 MR. BROOME: I can get around that.

14 MR. LANCE BELL: I know. I know. I just am  
15 saying --

16 MR. BROOME: Do I have a HIPAA problem if someone  
17 has told me what his medical problems are?

18 THE COURT: That's what I'm wondering, whether I  
19 need to let Mr. Bell do some examination of Mr. Housner.

20 MR. BROOME: I learned his health problems from  
21 unnamed sources.

22 MS. WICK: Prior to us notifying you last night?

23 MR. BROOME: Yes.

24 MS. WICK: Okay. And I am not prying I just want to  
25 clarify.

1           MR. BROOME: It's a small dealership in the big  
2 picture of things, and people know people. And people around  
3 the Birmingham car dealership have said, I have heard from A,  
4 B, and C as far as this.

5           MS. WICK: I just wanted verification for the Court.

6           MR. LANCE BELL: I have been asked, how is Forest's  
7 health, is Forest okay? People worry about him at the  
8 dealership.

9           MR. BROOME: It's not been from me.

10          MR. LANCE BELL: Right, right, but I have had that  
11 somebody would know, well, say, look, how is Forest, we heard  
12 is ill, we just want to make sure he is okay.

13          THE COURT: Well, here is my greatest concern -- I  
14 am concerned about everything we've discussed so far -- but  
15 the evidence until Mr. Housner took the stand was that he was  
16 very much in the center -- or part of all of the discussions  
17 that were going on with respect to the 15 deals, and more  
18 broadly, was -- Mr. Visser had testified that he only  
19 communicated with Mr. Housner, and that Mr. Housner carried  
20 out all of his instructions.

21          I want to say this delicately, as delicately as I can,  
22 but Mr. Housner's demeanor today is that he is a simpleton who  
23 would essentially be a puppet of Mr. Visser and has suggested  
24 that he couldn't even carry out many of the instructions that  
25 he had been given. If this is not the Mr. Housner who was

1 working with Mr. Visser and the jury is left with that  
2 impression, that is extremely prejudicial and problematic, and  
3 we need to address it.

4 I need help understanding the lawyers' positions about  
5 how the Court should address it because I don't think I can  
6 leave this prejudicial impression on the jury in light of the  
7 nature of this case and all the testimony that has come before  
8 Mr. Housner's testimony.

9 MR. BROOME: Your Honor, obviously, I don't think  
10 anybody would -- and I have never met the man and never seen  
11 him before lunch. I don't think it's the same person,  
12 physically or mentally.

13 MS. WICK: And I obviously never knew Mr. Housner in  
14 March 2013 or prior to our first meeting with him. I will say  
15 this, I do not think that Mr. Housner is going to be the last  
16 witness that will testify that he was Mr. Visser's puppet and  
17 that what Mr. Visser testified to is not in fact what Mr.  
18 Housner's role at the dealership was. I think that part of  
19 the problem here is sequence, because all we have right now is  
20 Mr. Visser and then Mr. Housner. And had we known before last  
21 night that this was going to be an issue, we maybe could have  
22 changed the order of the witnesses so that other people before  
23 Mr. Housner were coming in and contradicting and testifying so  
24 there wasn't suffer such a glaring difference between the two.

25 MR. BROOME: So you are saying you are impeaching

1 your own witnesses already?

2 MS. WICK: We do that with cooperators all the time,  
3 Bill. All the time. And let me be clear, no matter how many  
4 times I tell a witness in a proffer, you need to come in here  
5 and tell the truth, every trial, they always get up and they  
6 always tell some part that's not the truth.

7 MR. BROOME: I will say what Mr. Housner has  
8 testified to today is not in as much detail as material that  
9 the government has provided to me.

10 MS. WICK: Some of that's questions that we may have  
11 asked him in a proffer that we didn't ask him today, and if  
12 you want to cross him on that, I think that's --

13 MR. BROOME: I am just saying he didn't remember  
14 things today which he talked about in detail.

15 MS. MURNAHAN: In reports.

16 MS. WICK: If that was the case, I would let it go,  
17 I didn't try to refresh his recollection. I wasn't going to  
18 put a paper in front of him if he didn't remember sitting  
19 there today. And frankly, with his health issues, I didn't  
20 want to --

21 MS. MURNAHAN: Scare him?

22 MS. WICK: -- scare him for lack of a better word.

23 MR. LANCE BELL: I am going to leave it up to the  
24 Court. I think I can waive any HIPAA violations or anything  
25 of that nature that anybody wants to do. If you go out there

1 and try to ask him questions about his medical, he is going to  
2 tell you he was in the hospital. He is going to kind of tell  
3 you, I don't think I forget anything.

4 MR. BROOME: That would be one of the questions: Is  
5 your memory as good today as it would have been a month or two  
6 ago?

7 MS. WICK: That I think he could answer is that he  
8 has --

9 MR. LANCE BELL: I asked him earlier, I said, you  
10 know I talked to anyone -- how do you feel? He said, I just  
11 really don't think I -- I think I remember everything. You  
12 tell me I don't, but I kind of think I do.

13 I guess, dealing with that with my mother, it was back  
14 something three times in the last week, something is going on.  
15 Everything is fine. I remember everything. Nobody told me.

16 THE COURT: It was difficult.

17 MR. LANCE BELL: It was so difficult they wouldn't  
18 admit it all that they were forgetting things or not doing  
19 certain things. Or you know, you didn't take a bath  
20 yesterday. Oh, and I took a bath yesterday, and I remember  
21 it. But they were so -- and I guess I see the early stages,  
22 and I don't know if it's what he has been going through. I  
23 don't know the answer. I wish I knew that. If I knew the  
24 answer, I would be a millionaire.

25 MR. BROOME: I would probably more personal

1 experience than all of you. My dad died in January of 2014.  
2 And medical experts may tell you that dementia does not kill  
3 you, I would beg to differ.

4 MR. LANCE BELL: That's what killed my mother in  
5 September of 2014.

6 MR. BROOME: Well, I am sorry.

7 For six months my dad went downhill. He was sharp as  
8 a tack in October, and then in January, he is lying in a  
9 diaper in a bed.

10 THE COURT: Let's do this. Let's do cross  
11 examination, and then somehow the Court is going to address  
12 this on the record with the jury. I am going to see how we  
13 handle it in cross examination, Mr. Broome. And then if the  
14 Court feels that additional instructions need to be given to  
15 the jury. Or it may be that it would be appropriate for Mr.  
16 Bell to ask a few questions of Mr. Housner, let's cross that  
17 bridge when we come to it. Let's take this in stages and see  
18 where we end up. I am also concerned about having Mr. Housner  
19 on the stand for too long because of his health.

20 MR. BROOME: Judge, 20 minutes probably at the most.

21 THE COURT: I also have to be fair to everybody and  
22 let them ask the questions they have to ask.

23 MR. BROOME: No, Judge, that's all I planned on  
24 doing.

25 MS. WICK: I will say just so the Court knows, I



1 know it's kind of telling the future, but you know, obviously,  
2 Mr. Broome knows from the 302s and MOIs, that the other  
3 witnesses that we are going to be calling that work with Mr.  
4 Housner, Mr. Shepard and Mr. Green, they will be able to  
5 testify what their experience with his role, his sharpness, at  
6 the time in March 2013 in terms of -- and able to compare in  
7 terms of --

8 THE COURT: But they won't have been in the  
9 courtroom today to see his demeanor today. That's part of the  
10 problem. Because they're excluded from the courtroom, they  
11 can't comment on how he is in the courtroom today. And the  
12 contrast is significant for purposes of the jury's  
13 appreciation of what was happening in 2013, which is what is  
14 relevant.

15 MS. WICK: Right -- and yes. I am sorry, I just  
16 wanted you to know that there would be additional relevant  
17 information from other witnesses.

18 THE COURT: Understood, but --

19 MS. WICK: But it is not --

20 THE COURT: -- business they can't address all of  
21 the issues that we're discussing because they aren't here to  
22 observe Mr. Housner.

23 MS. WICK: I just wanted to throw that out there  
24 because it is not a complete --

25 MS. MURNAHAN: I don't believe any of them has

1 probably seen him.

2 MS. WICK: And probably not because all of them are  
3 represented by counsel, and likely they've all been  
4 instructed --

5 THE COURT: -- instructed not to talk to each other.

6 MR. LANCE BELL: And I don't have a clue. I saw the  
7 reaction of two people today that have not seen him, and the  
8 reaction --

9 THE COURT: I am watching it, too.

10 MR. LANCE BELL: -- when they put us in a room, then  
11 your client when he came in --

12 MR. BROOME: She was crying when he took the stand.

13 MR. LANCE BELL: From the time I met him until when  
14 I saw him, I was just like, holy cow, how much weight have you  
15 lost? Because I really haven't had any conversations with him  
16 in the meantime.

17 MS. WICK: And whatever the Court thinks is best and  
18 most important to make sure the jury understands. Like the  
19 government definitely wants to make sure they understand that  
20 change.

21 THE COURT: All right. Let's go back and we'll do  
22 cross examination and then see where we end up. Thank you for  
23 your time.

24 (Conclusion of hallway conference.)

25 (A recess was taken at 4:18 p.m.)

1 (In open court. Jury present at 4:23 p.m.)

2 THE COURT: Mr. Broome, cross examination, please.

3 CROSS EXAMINATION

4 BY MR. BROOME:

5 Q Ms. Housner, my name is Bill Broome, and I represent Kim,  
6 and I have some questions to ask you this afternoon, sir. I  
7 think you and I are probably about the same age. How old are  
8 you, sir?

9 A Old?

10 Q I feel that way, too. Sometimes?

11 A 62.

12 Q 62. I am 63. Sir, in the last few months, since maybe  
13 January, have you had some health problems?

14 A Yes.

15 Q What these folks would like to know, what are what are  
16 your health problems?

17 A Easter, I was in severe pain so much pain that I couldn't  
18 stand up. My wife took me to the emergency room. They did a  
19 CAT scan and found out I had a perforated colon.

20 Q That was Easter of 2015?

21 A Correct.

22 Q Of this year?

23 A Yes.

24 Q And have you been getting treated for that since then,  
25 sir?

1 A I was in a hospital for four days at that time, and they  
2 treated it with -- temporarily treated it with antibiotics to  
3 stop the infection. About approximately maybe two weeks  
4 after, they let me out. I just was really sick. And I went  
5 back in after my white blood cells were very high, I did a CAT  
6 scan. I had a baseball-sized abscess on my colon where the  
7 perforation was. It was infected. I was in there four days  
8 while they had to -- but they had to first use antibiotics to  
9 calm it down a little bit, and then they had to go in and  
10 drain it.

11 Q Hopefully, they gave you some medication for the pain,  
12 too, didn't they, sir?

13 A Oh, yes, I didn't feel anything after.

14 Q Are you still taking some pain medication?

15 A No, I am not.

16 Q Okay. Back to Easter --

17 A I do still have to go back in and to have a piece of my  
18 colon removed.

19 Q And you are looking at a surgery some time; is that  
20 right?

21 A I would go in on the 25th of this month. If I'm healthy  
22 enough, then they'll probably schedule the surgery.

23 Q So right now, your doctors have told you you are not  
24 healthy enough to have this surgery?

25 A They wanted me stronger.

1 Q Okay. And you have been working on that since Easter,  
2 April?

3 A Well, I went back in and it was -- when I wind up the  
4 second time in the hospital, it was actually May. So, yes.

5 Q And how did you feel? I mean, can you walk around?

6 A Yeah, I don't feel bad. I mean, the doctors scare you,  
7 telling you if it comes back, you'll die. But I mean, I  
8 don't, they say if I have this surgery, that I will be okay.

9 Q Mentally, as far as thinking, did you read the newspaper  
10 or books or things back in -- or automotive reports back  
11 earlier this year, the start of 2015?

12 A Did I read?

13 Q Yeah. Did you read a lot of things?

14 A No.

15 Q Okay. Well, I was going to ask you if you were reading  
16 more now or less now than you did back in January?

17 A Back in January, I was working, so -- I definitely read a  
18 lot more than I do now.

19 Q Okay. So, you would be able to read these reports  
20 they've shown -- daily reports and RDR's and all of these  
21 reports that have to be filed in the car business. You were  
22 able to do that back in January of 2015, weren't you?

23 A I am not sure what all reports you mean. I don't know  
24 what an RDR is but...

25 Q Did you have daily reports on the sales?

1 A No, absolutely -- no, on sales?

2 Q Yes.

3 A No, I had daily reports on schedules and receivables.

4 Q Okay. And you were able to look through and understand  
5 all of those back in January of 2015?

6 A Yes.

7 Q How about now? Do you think you could do it today?

8 A I had to have Kim's help with some of them. I try to get  
9 her to help now with some of them.

10 Q Do you think you would be a little slower now in doing  
11 it?

12 A Yeah, I probably would.

13 Q Okay. And that's to be expected with all you have been  
14 through the last eight or nine months, since April, five or  
15 six months?

16 A Well, yeah.

17 Q Okay. Do you mind answering some questions for me?

18 A No, I don't mind at all.

19 Q Thank you. Are you on any medication today?

20 A Yes.

21 Q What medications are you on today?

22 A Metformin for my diabetics.

23 Q So am I.

24 A I am on -- I couldn't tell you the other -- oh, Lipitor  
25 for cholesterol. And there's another one I am on for

1 cholesterol. And then there's a blood pressure pill that I am  
2 on.

3 Q Anything related to your colon or antibiotics?

4 A No.

5 Q When you said the doctors are waiting for you to get  
6 stronger for your surgery, what have they told you they want  
7 you to get stronger at?

8 A They haven't. They just said they want me healthy to --  
9 they felt I couldn't make it through this surgery like when I  
10 was having the episode -- both episodes, they did not want to  
11 do surgery.

12 Q They still don't want to do surgery; is that correct?

13 A Well, they're going to on the 25th. I have a bunch of  
14 tests, and at that time, I guess if everything is good, we'll  
15 schedule surgery.

16 Q Let's go back to March of 2013, over two years ago, would  
17 you say you are a little slower today than you were in March  
18 of 2013?

19 A Yes, I am a little older.

20 Q Don't keep reminding me. Do you think your memory was  
21 better back in March of 2013 than it is today?

22 A That's a hard question. I don't --

23 Q Yes, sir.

24 A -- I don't have to remember much now.

25 Q Okay.

1 A I am not working, so I don't have --

2 Q You hadn't been testing yourself that much?

3 A No, I haven't.

4 Q Okay. Well, let's do the best we can and see if we can  
5 get through this together?

6 A Absolutely.

7 Q I believe you told Ms. Wick, you got hired as the  
8 director of -- what did you get hired as?

9 A Fixed ops director.

10 Q And in January of 2012, you got a promotion?

11 A I got more duties.

12 Q More work?

13 A More work.

14 Q You get more pay?

15 A Right then when it happened, I don't believe I did. I  
16 never been real good at dates. So I mean, I don't know --  
17 since then, I did get more, after that, but I don't believe at  
18 that point.

19 Q But in January of 2012, if I wrote this down right, you  
20 became the director of operations?

21 A Correct.

22 Q Of how many dealerships?

23 A At that time, four.

24 Q That would be -- I have been calling it the Cullman  
25 Nissan store, would that be one?



1 A Yes.

2 Q And the Birmingham Nissan store?

3 A Correct.

4 Q And the Birmingham Volkswagen store?

5 A Correct.

6 Q And did you have the Talladega Ford place at the time?

7 A No, I had Sylacauga Honda.

8 Q Sylacauga Honda. Okay. So there were four dealerships  
9 that you were, basically, you were the main man there in those  
10 four dealerships, weren't you?

11 A No.

12 Q Randy was?

13 A Yes, I handled -- since Randy didn't not want to -- I  
14 handled parts and service. He did not like working with the  
15 facilities and vendors. I handled facilities. And then he  
16 asked me to work with the receivables. But the only one early  
17 on was contracts and transits.

18 Q But at some point in time, didn't you get directly  
19 involved in the sales part of the stores?

20 A No.

21 Q You were never involved in the sales part of the stores?

22 A No.

23 Q Okay. Do you remember -- if I told you that Kim was  
24 hired and came to work in November of 2012, would you agree  
25 with me or disagree with me?

1 A I would say that sounds right.

2 Q Okay. And when she first came, who did she report to --  
3 who would have been her immediate supervisor or boss?

4 A Randy Visser.

5 Q And were you -- did she report to you, also?

6 A We worked together very closely. I mean, I felt we were  
7 co-workers. She helped me tremendously. I helped her with  
8 anything I could help her with.

9 Q And she is a nice lady, isn't she?

10 A Well, she is a great person. She is the best controller  
11 I ever worked with.

12 Q And you like her?

13 A Absolutely.

14 Q And would you say you kind of took her under your wing  
15 there at the dealership and introduced her around to all the  
16 people when she was new?

17 A No.

18 Q No? Okay.

19 A That's not -- I am a very antisocial, quiet person.  
20 That's not something I would do.

21 Q When she had questions about things, would she come to  
22 you first?

23 A Yes, most people came to me because they were somewhat  
24 afraid of Randy.

25 Q Afraid of him?

1 A A lot of people were. I don't know if Kim was. Kim is  
2 pretty strong. But I mean, Kim knew that I talked to Randy  
3 every day, and she would bring things to me if it was --  
4 basically, I would have to get the answer from Randy. Unless  
5 it was parts and service, then I pretty much knew the answer.

6 Q How about the other sales managers and general managers,  
7 would they come to you with questions?

8 A At that time, no.

9 Q How about in March of 2013?

10 A No. When Abdul was there, Abdul would spend more time  
11 with Randy than I did.

12 Q Okay. Do you recall in March of 2013 Mr. Visser talking  
13 to you about Birmingham is not going to meet their sales  
14 objectives?

15 A Yes.

16 Q And do you remember what Mr. Visser, Randy Visser told  
17 you?

18 A Yes, he told me that he wanted to use the Cullman deals  
19 in Birmingham for them to meet their objective.

20 Q And did you and he talk about that you did that in parts  
21 and --

22 A No.

23 Q -- in parts back and forth?

24 A No, we did not.

25 Q But you know about switching the parts, selling the parts

1 back and forth, didn't you?

2 A Yes, we had done that.

3 Q I believe you testified earlier the director of  
4 operations for Nissan had told you that that was all right?

5 A They suggested it to my parts director, and he did, and  
6 then he came and told me that they told him it was okay, and  
7 he did it.

8 Q So you okayed that, the parts?

9 A No, he had already done it.

10 Q He was already doing it?

11 A He told me because he didn't want me to get upset.

12 Q Okay.

13 A He was assuring me that he didn't buy parts that he  
14 didn't need; that the parts that he bought were parts that he  
15 could use and that he wasn't overinflating the inventory.  
16 Which is something I would have been upset with.

17 Q How did that actually work as far as getting the parts to  
18 Cullman? Would the Birmingham store buy the parts or the  
19 Cullman store buy the parts?

20 A The Cullman store would buy the parts --

21 Q Okay.

22 A -- which would give them a higher parts number.

23 Q So they could win a prize or incentive?

24 A Yes, the incentive contest that was going on. And then  
25 the parts would be delivered to Birmingham.

1 Q From Cullman or directly from the factory?

2 A From Cullman.

3 Q Okay. So the parts would be delivered to Cullman?

4 A Correct.

5 Q Kind of like these cars were delivered to Cullman, right?

6 Is that what we're talking about?

7 A Yes.

8 Q But then the parts would be shipped to Birmingham?

9 A Yes. The parts that -- my parts director had ordered  
10 that were actually for Birmingham -- he needed them for  
11 Birmingham, but he ordered them through Cullman to get  
12 Cullman's number up, would then be shifted back to Birmingham.

13 Q How would they transport them, in a truck or a van?

14 A A truck. I mean, I --

15 Q I guess it would depend on how big the part was, would  
16 it?

17 A There was maintenance parts. All of their contests had  
18 to do with maintenance items. That's the items that Nissan  
19 would push. So it would be oil filters and air filters. That  
20 type. Not large items. Brake pads.

21 Q Okay. And if you know, how would Cullman get paid for  
22 those parts?

23 A Birmingham would pay for them.

24 Q The Birmingham store would write the check and pay  
25 Cullman?

1 A Yeah.

2 Q Kind of like they did for these incentives and these 15  
3 deals we've been talking about?

4 A All about how the deals were actually done, but on the  
5 parts, I know absolutely, the parts were purchased from  
6 Cullman.

7 Q Birmingham store would write Cullman a check, or transfer  
8 money into their account?

9 A In a company, yeah. Yes.

10 Q Okay. Now, so when Mr. Visser, Randy Visser told you  
11 we're going to transfer, did he use the word "transfer" or  
12 "shift" or best you remember?

13 A I have been told not to guess.

14 Q Right. The best you remember?

15 A I don't know the term that he actually would use, but I  
16 knew that it meant move the sales from Cullman to Birmingham.

17 Q Right. Were you given a list of instructions as to how  
18 to accomplish that?

19 A I would have, yeah -- he would have had to give me a  
20 list. I did not know how. He had told me that he knew how.  
21 When he told me move -- we're going to move the deals, I know  
22 how to do it. I don't remember him saying and here is how you  
23 do it.

24 Q But he told you -- did he infer to you or tell you it was  
25 okay to do this, he knew how to do it?

1 A Yes. Yeah, absolutely. I mean, those are his words. I  
2 know how to do this.

3 Q And did you ask him if it was okay?

4 A I had already asked him. Back before when we did the  
5 parts thing, I had asked him can you move car sales from one  
6 store to another. And he told me, yes, it's complicated. It  
7 was something like that. But I asked because when the parts  
8 were done, it wasn't let's do this or can we do it? It was  
9 like, can we do this? Can this be done? That was my question  
10 to him.

11 Q And Randy Visser told you, yes, but it's complicated?

12 A Complicated. I don't know if it was those exact words,  
13 but it was something of that nature that it was complicated.

14 Q Do you remember what you told Kim to do in transferring  
15 or shifting these deals from Cullman to Birmingham?

16 A No, I don't.

17 Q Okay. Could you have told her you need to keep a list of  
18 the deals that come from Cullman to Birmingham?

19 A Someone would absolutely have to have a list of the  
20 vehicles.

21 Q Is that something that Mr. Visser would have told you to  
22 tell Kim to do?

23 A It's something that Mr. Visser would have told me. The  
24 whole -- everything but RDR, he would have had to told me  
25 because I did not know the process, I did not know actually

1 what needed to happen.

2 Q You would have known to do -- to tell Kim to do back in  
3 March of 2013 when it happened, wouldn't you?

4 A I am sorry. Repeat that.

5 Q If Randy Visser told you in March of 2013 to tell Kim to  
6 do certain things to shift these deals, you would have known  
7 that in March of 2013?

8 A Yeah, I would have. I would have had them put it on  
9 paper or got notes from him. Because in parts and service, I  
10 have been doing this since '76, you don't have to make notes.  
11 I know what to do. In building and facilities, I have been  
12 working with -- I have been involved with building probably at  
13 least eight, ten dealership facilities.

14 Q You talking about from the ground up?

15 A From the dirt, piece of land.

16 Q You had to tell the architects and the contractors what  
17 to do, didn't you?

18 A Well, obviously an architect knows what he is doing. But  
19 I would start by getting a survey of the dirt. I mean, so,  
20 yes, I knew -- so I knew that. In sales related items, I  
21 would ask him to either -- either he needed to sit and give me  
22 detailed instructions while I wrote it down. I'd handwrite.

23 Q If Randy had told you say A, B, and C -- tell Kim to do  
24 A, B, and C?

25 A I would have done it.



1 Q You would have told Kim?

2 A Yes.

3 Q And Kim trusted you, didn't she?

4 A I think she did.

5 Q And you gave her no reason not to trust you?

6 A I did not try to.

7 Q Okay. But as you sit here today, you cannot remember  
8 exactly what maybe A, B, or C was?

9 A No.

10 Q And that's fine --

11 A It was a long time ago, and it wasn't an area that I was  
12 familiar.

13 Q And plus you have had, sir, your very serious health  
14 problems?

15 A With or without that. I still wasn't familiar with the  
16 process.

17 Q Yes, sir. Now I believe you told us about some e-mails  
18 that you would get and a lot of e-mails you just ignored?

19 A I got -- sometimes Randy would send five e-mails in five  
20 minutes. I would scan them and see if there's anything that I  
21 felt was real.

22 Q That related to parts or service, you'd pay attention --

23 A Or billing or something that we had, you know, that I  
24 would normally do. Something that wasn't a part of my duties,  
25 then, many times I would call him after I got them because I

1 just didn't understand his e-mails.

2 Q Okay. Do you recall ever having anymore conversations  
3 with Kim about these 15 deals shifted from Cullman from  
4 Birmingham?

5 A No -- I mean, whatever I was asked to do by Randy, I  
6 trusted Randy. Also, just like I trusted Kim, I trusted  
7 Randy. I would have taken it to her, if it needed to be done  
8 by accounting.

9 Q Okay. There has been some discussions about Birmingham  
10 deal jackets and Cullman deal jackets. Do you know what I am  
11 talking about when I am talking about a deal jacket?

12 A Yes, I mean, if you held a deal jacket up, I would say  
13 that's a deal jacket. That looks like a deal jacket.

14 Q You messed me up. Because I was going to pick this up  
15 and ask you if this looked like a deal jacket?

16 A That looks like a service file.

17 Q A service file? And then I was going to ask you if this  
18 looks like a deal jacket (indicating)?

19 A From the back, I don't know if I would have recognized  
20 it. But once you turn it over, I would.

21 Q So my demonstration might have worked. This is a deal  
22 jacket?

23 A Yes.

24 Q Do you remember which color was Cullman and which color  
25 was Birmingham?

1 A No.

2 Q Do you recall if you -- do you even recall the 15 deals  
3 that we're talking about that were actually shifted or  
4 transferred from Cullman to Birmingham?

5 A The actual deals, like the cars?

6 Q Well, no, I am not talking about the names of the folks,  
7 or do you remember there were 15 deals that were transferred?

8 A I remember 15.

9 Q Okay.

10 A But I couldn't tell you what they were, or if they were  
11 cars, trucks. I don't recall.

12 Q Some of these e-mails, if I showed you in Exhibit 24 --  
13 if I showed you what's been admitted as Government's Exhibit  
14 24, just the middle e-mail, it says it came from Kim Branch,  
15 doesn't it, sir?

16 A Yes.

17 Q And it says it's to Randy? And then it's got a -- I used  
18 to call it carbon copy -- but nobody knows that except me or  
19 you.

20 A I know what that is.

21 Q I do, too. But a CC came to you; is that right?

22 A Yes.

23 Q Do you remember even looking at this?

24 A No, after I looked at this one, I kind of just didn't  
25 bother with any of them. They would have come through in the

1     stack because it goes back and forth on my computer screen.  
2     You will see them all. I wouldn't want to look at that one  
3     again.

4     Q     Do you ever recall seeing any Birmingham deal jackets for  
5     those Cullman deals?

6     A     No.

7     Q     Okay. Do you know if they ever even existed?

8     A     Yeah, because the FBI picked them up later, 2014 or  
9     something.

10    Q     When they came with a search warrant?

11    A     Yeah.

12    Q     Did you know where they kept the deal jackets, physically  
13    kept the deal jackets at the dealership in Birmingham?

14    A     They were upstairs over in our accounting office.

15    Q     So they would have been in Ms. Branch's office or up  
16    where?

17    A     It would have been -- not in her office but outside on a  
18    rack. They were kept there until they were a certain age, 12  
19    months -- I don't know what the age was -- and then they were  
20    put in boxes and put in storage.

21    Q     We're talking about a rack, somebody tried to describe it  
22    for me. I would like for to you try to describe it for these  
23    good people. When you are talking about a rack, what are you  
24    talking about?

25    A     It was on the wall, kind of like where you see the

1 doctor's office where they keep patient files and stuff.

2 Q But you said it was on the second floor?

3 A Yes.

4 Q Was it a solid floor, the bottom, like this floor is here  
5 with a rug on it and things?

6 A The second floor?

7 Q Yes, sir.

8 A Yeah, it was the accounting office.

9 Q Where the deal jackets were, was that where they were,  
10 too?

11 A Yes.

12 Q But it was over the Nissan -- over the Volkswagen?

13 A The accounting office was the upstairs at the Volkswagen  
14 store, initially. Then it was later moved.

15 Q Where did it move to?

16 A It moved over to where my office was, my office and the  
17 -- like a conference room.

18 Q Do you remember when --

19 A When?

20 Q -- when they moved?

21 A No, I can't tell you right off.

22 Q Okay. We'll ask her that.

23 When Randy Visser told you to shift all of the rest of  
24 the Cullman sales, did he tell you for what particular time  
25 frame?

1 A If it was the end of an incentive program, then  
2 apparently they were at the end of that program, they were  
3 short 15. I don't know which 15.

4 Q At the end of that incentive program?

5 A Yes, it would have been at the end of an incentive  
6 program.

7 Q I believe you testified earlier that you trusted Randy?

8 A Absolutely.

9 Q Ms. Wick asked you about target letters and whether you  
10 were going to be charged, and this, that, and the other. You  
11 have not been charged with anything related to those 15 deals,  
12 have you, sir?

13 A No, I haven't.

14 Q Because if you had, you would be sitting down here with  
15 me probably or somebody instead of being --

16 MS. WICK: Objection, Your Honor.

17 MR. BROOME: I will withdraw that question.

18 BY MR. BROOME:

19 Q That's all I have, sir. And I would think I speak for  
20 everybody in the room, we certainly hope your surgery is a  
21 success.

22 A Thank you.

23 THE COURT: Ms. Wick, do you have redirect?

24 MS. WICK: I promise it will be less than six  
25 minutes of redirect.

1 THE COURT: Beware of promises about time.

2 (Laughter from audience.)

3 MS. WICK: Good point, Your Honor, I will be  
4 careful.

5 REDIRECT EXAMINATION

6 BY MS. WICK:

7 Q Mr. Housner, earlier you said that there was a parts  
8 incentives program that you were familiar. Was there an audit  
9 process for that parts incentives program?

10 A Not to my knowledge. I never went through an audit for  
11 parts. I went through a warranty but not parts audit.

12 Q Okay. Were there official program rules that you were  
13 familiar with for that parts incentives program?

14 A There was rules, but I was not familiar with them.

15 Q When you participated in the audit in 2013 and you sat  
16 through that audit conference, do you remember any mention of  
17 there being, I think, like, \$24,000 in change in charge backs  
18 as a result of that audit?

19 A Yes.

20 Q Who would you have talked to -- well, did you have any  
21 conversations with anyone at the dealership about those charge  
22 backs?

23 A Not that I recall.

24 Q Based on your understanding of how the dealership was  
25 run, would anyone at the dealership have had to deal with the

1 accounting of those charge backs?

2 A I guess the office would. Someone would have to post  
3 those charge backs to the financial statement.

4 Q What was your understanding of whose responsibility that  
5 was?

6 A I would have taken that to Kim, if she would have done  
7 it, or to one of her -- she had nine clerks. Everything I did  
8 in the office I went through Kim.

9 Q Okay. A minute ago when Mr. Broome asked you about the  
10 15 Birmingham deal jackets, I think you said, yes, those --  
11 you were familiar with them because the FBI had taken them.  
12 How did you know or where did you hear that the FBI had taken  
13 the 15 Birmingham deal jackets that we've been discussing?

14 A I think we might be talking about two different things.  
15 There was two times. Originally, when -- I was not there when  
16 the FBI came in and took all the deals -- when they originally  
17 came in. At that time, after I was back, I think I was at one  
18 of the other stores in the morning, I had heard that they had  
19 taken the Cullman deals by mistake. I believe they were  
20 supposed to just take Birmingham, maybe, and they took  
21 Cullman. The reason I was told is because they were being  
22 brought back, and Randy just had told me that the FBI maybe  
23 bringing some deals back, just to bring them back -- just get  
24 ahold of them, and make sure you keep track of them. And then  
25 the other time was maybe a year later when the FBI wanted to



1 see those specific deals. So there was two times.

2 Q And I want to talk with you about that second time. Do  
3 you know if it was in June, 2014?

4 A No.

5 Q Do you know if the request was in regards to a subpoena  
6 that was issued to the dealership?

7 A As I stated before, I never heard the word subpoena. I  
8 just heard that the FBI wanted 15 deals.

9 Q Do you actually know whether the dealership gave the  
10 government the 15 Cullman deal jackets or the 15 Birmingham  
11 deal jackets?

12 A I don't know.

13 MS. WICK: No further questions, Your Honor.

14 MR. BROOME: I don't have anything else, Your Honor.

15 THE COURT: All right. Mr. Housner, thank you very  
16 much. You are excused.

17 Ms. Wick, does the government intend to call any other  
18 witnesses today?

19 MS. WICK: Your Honor, the next one would, I think,  
20 be long enough where I would not want to do that to the jury.  
21 The only thing I would ask, maybe if we could squeeze in, is  
22 just to read some of the stipulations that may be relevant to  
23 some of the testimony. I think there were six left.

24 THE COURT: If they are relevant to Mr. Housner's  
25 testimony?

1 MS. WICK: Mr. Housner and Mr. Visser's, they were  
2 in relationship -- but the additional stipulations.

3 THE COURT: Okay. Let's go ahead and put those in  
4 the record, please.

5 Again, members of the jury, these are facts to which  
6 the parties have agreed.

7 MS. WICK: In regards to the additional  
8 stipulations, Stipulation Number Three, Government's Exhibit  
9 45 requested original deal jackets for the 15 deals at issue  
10 in this case. Number Four, there were a total of two grand  
11 jury subpoenas issued to Serra Nissan in 2014. Number Five,  
12 the June 16th, 2014, subpoena was the second grand jury  
13 subpoena issued in 2014. Number Six, the first subpoena  
14 requested information unrelated to this matter. Number Seven,  
15 the defendant, Kimberly Branch, was responsible for gathering  
16 the documents responsive to the subpoena. And Number Eight,  
17 the defendant, Kimberly Branch, provided Government's Exhibits  
18 One through Fifteen in response to the June 16th, 2014  
19 subpoena. Thank you, Your Honor.

20 THE COURT: Thank you.

21 All right. We will take a break for today then. We  
22 will start again tomorrow morning at 9:00 a.m. We will do our  
23 best to actually start at 9:00 a.m. tomorrow morning. So  
24 please be here by ten minutes to 9:00.

25 Please remember that you are not to discuss any of the

1 evidence that you have heard in the case. Please also  
2 remember that you are not supposed to do any independent  
3 research. And should you run across any media coverage of the  
4 case, if there is some, then please make sure you don't read  
5 it. All right? Thank you very much. Have a good night.

6 (Jury out at 5:03 p.m.)

7 (In open court.)

8 THE COURT: All right. I would like to begin by  
9 seeing counsel and the government's agents at the bench,  
10 please.

11 (The following proceedings were held at the bench:)

12 THE COURT: There was some inappropriate laughter.  
13 It seems you all were laughing at some of Mr. Housner's  
14 responses, and the jurors didn't appreciate what the nature of  
15 your laughter was. I believe it had to do with a comment that  
16 Mr. Housner made about Mr. Visser. You all need to be very  
17 careful about that. That can easily convey the wrong message  
18 to the jury. You all should not be laughing about anything.  
19 This is a serious proceeding. All right? There's some  
20 natural places for laughter where it's intended, and all of us  
21 are going to respond to that. But if you see he marred  
22 someplace because of something involved in this case, you may  
23 not express that in the courtroom. All right?

24 MS. WICK: Yes, Your Honor, the government  
25 apologizes profusely.

1           MR. BROOME: Judge, I don't think that came from my  
2 table. I wasn't paying attention. I think I was doing the  
3 questioning.

4           THE COURT: I just know that I looked over and saw  
5 the agents laughing.

6           SPECIAL AGENT HENKEN-GERHARDT: I apologize to the  
7 Court.

8           MR. BROOME: Judge, while we are here, I think Mr.  
9 Bell was --

10          THE COURT: I need to talk to counsel and Mr. Bell.

11          MR. BROOME: I didn't do as well as I thought I  
12 could.

13          THE COURT: We're going to take that up next. Let's  
14 let everybody go, and then I will meet with counsel and Mr.  
15 Bell.

16                   (Conclusion of bench conference.)

17                   (In open court. Jury not present.)

18          THE COURT: All right. We've now had cross  
19 examination of Mr. Housner. We've had some redirect. Let me  
20 hear from counsel about where we stand with respect to the  
21 concerns that the Court discussed outside of the hearing  
22 earlier this afternoon.

23          MR. BROOME: Judge, I had much more faith in my  
24 ability to get some things out of him than I was able to do.  
25 He discussed some of his health problems and gave a reason for

1 what he might have been having some memory difficulties or  
2 some difficulties, but I don't think he ever admitted he had  
3 any. The best I can recall -- Your Honor, I don't know if I  
4 have any suggestions. I will listen to others.

5 MS. WICK: I think the government's suggestion, if  
6 the defense counsel and the Court would be amenable to it  
7 would be, there are additional witnesses that will testify.  
8 Part of their testimony is going to be conversations that they  
9 had with Mr. Housner. And we can elicit what was Mr.  
10 Housner's demeanor, what were his day-to-day roles, we can  
11 discuss the things that Mr. Visser talked about and get that  
12 testimony from them.

13 Then, after their testimony, if we want to talk about  
14 whether a curative instruction may be for the jury would be  
15 helpful, maybe we could fashion something at that point, that  
16 we could add to the proposed jury instructions, if it's  
17 necessary at that point, somehow address the issue that we're  
18 talking about essentially.

19 MR. BROOME: Your Honor, I think the Court made a  
20 suggestion, a comment, or maybe Mr. Bell. The witnesses that  
21 will testify, they can testify as to what they observed back  
22 whenever it is that took place, and I am assuming in March of  
23 2013. But if they have not seen him in the last six months, I  
24 am not real sure how those witnesses can convey his demeanor  
25 today -- I know what you are saying as far as they can say he

1 was fine.

2 MS. WICK: Oh, no, I understand. I don't want to  
3 interrupt you.

4 MR. BROOME: March 2013. No, that's really the end.

5 MS. WICK: The only thing I was going to add is that  
6 Mr. Broome has -- I think on multiple occasions, and I think I  
7 have made the mistake of doing it once, and I apologize now --  
8 but Mr. Broome has mentioned on multiple occasions that Ms.  
9 Branch intends to testify in this case.

10 MR. BROOME: She is going to testify.

11 MS. WICK: And I am not in any way exerting the  
12 pressure or expectation. I am not suggesting based on those  
13 representations, but to the extent that she does testify, I  
14 would think that that would be critical testimony.

15 THE COURT: And I would suspect that you are going  
16 to question her credibility, are you not?

17 MS. WICK: On his demeanor then?

18 THE COURT: No, you are going to try to impeach her  
19 and call into question, generally, in front of the jury Ms.  
20 Branch's credibility. Is that not a fact?

21 MS. WICK: Only in regard to her intent to defraud,  
22 not like in terms of -- I mean, not mentioning Mr. Housner --  
23 or are you saying Mr. Housner is lying? Not in regards to if  
24 her testimony contradicts Mr. Housner.

25 I mean, I understand what you are saying. The

1 defendant gets on the stand, yes. The government is  
2 absolutely going -- the nature of everything is going to be to  
3 impeach her.

4 THE COURT: And to show that she is a liar, she  
5 commits fraud -- so, you are going to ask the jury -- jury do  
6 you believe what she says with respect to Mr. Housner and the  
7 difference between that Mr. Housner that the jurors saw on the  
8 witness stand today and the Mr. Housner who was communicating  
9 with Ms. Branch in 2013, but disregard everything else she  
10 says because she is a liar?

11 MS. WICK: Well --

12 THE COURT: Anything that's favorable to Ms. Branch,  
13 you are going to ask them to disregard.

14 MS. WICK: I mean, in fairness, if she lied about  
15 things during direct, then those are the things that I would  
16 cross her on. I think she is probably going to tell the truth  
17 about quite a bit in this case. The facts here aren't really  
18 in dispute.

19 THE COURT: You have already said she is lying about  
20 the grand jury subpoena, right?

21 MS. WICK: Oh, no, no, no, no. I think absolutely  
22 her knowledge and the import of what she was doing, she is not  
23 being honest about. But as Mr. Broome has said, I don't think  
24 she is going to get up there and say the deal jackets weren't  
25 created, these deals weren't shifted. We didn't -- I don't

1 know. But having said that, I mean, no, all of cross is not  
2 going to be, you are lying, I don't think about everything.  
3 But I understand your point.

4 THE COURT: The bottom line is I am not going to  
5 rely on Ms. Branch's testimony to cure the problem that we  
6 have.

7 MR. BROOME: The other two witnesses are now  
8 convicted felons that bogus up documents and make up figures  
9 and do all kind of things, but they're not the most credible  
10 people.

11 MS. MURNAHAN: We have other witnesses who I can't  
12 say are not convicted felons but who could testify to their  
13 interactions with Mr. Housner, and that he was sharp, and that  
14 he had no memory problems.

15 MS. WICK: They have not been convicted in the other  
16 Serra case. They may have criminal histories unrelated to  
17 this case.

18 MS. MURNAHAN: Unrelated to this fraud. And then  
19 the jury could compare those witnesses' testimony to what they  
20 have seen.

21 MS. WICK: There would be four witness that would  
22 corroborate if Ms. Branch testifies that he was different, he  
23 was sharper, etc., and I think the Court could still after all  
24 of that maybe fashion -- we could fashion a jury instruction  
25 just -- I don't know if there's one that exists, or if there's



1 one that we may be could craft that would essentially somehow  
2 address that, but I think after the cross and after the  
3 direct, especially after the Court's instruction that he only  
4 responds -- don't guess, if you remember, I think --

5 THE COURT: Here is what I suggest we do. It's not  
6 perfect, but I don't think anything is going to be perfect,  
7 under the circumstances. I suggest we continue. I suggest we  
8 see how the testimony from the remaining witnesses develops.  
9 The Court is going to consider asking Mr. Housner to return to  
10 the courtroom and have some of these other witnesses here.  
11 We'll have to come up with some follow-up questions, so that  
12 those witnesses may observe Mr. Housner. We could then have  
13 those witnesses recalled to the witness stand and talk about  
14 whether the Mr. Housner they see today is the same Mr. Housner  
15 who they were working with in 2013. There is also the option  
16 of having the parties come up with a stipulation about Mr.  
17 Housner's mental abilities right now. The challenge there is  
18 you all didn't know Mr. Housner in 2013.

19 MR. BROOME: I don't know him at all.

20 THE COURT: It's difficult to craft a stipulation  
21 about something that you don't have personal knowledge of. I  
22 would guess you would have to talk to somebody reliable who  
23 worked with Mr. Housner because this is just a sticky  
24 situation. And the Court is willing to consider instructions.

25 But the Court didn't know Mr. Housner in 2013. So,

1     it's just a challenging situation. While I am reluctant to  
2     bring Mr. Housner back just because of his health, I don't  
3     want to cause any upset for him or put him through additional  
4     testimony. That may be the best way to try to address the  
5     situation.

6             MS. WICK: Just out of curiosity, I'm just throwing  
7     this out.

8             THE COURT: Please. I am looking for answers.

9             MS. WICK: The government does not relish doing  
10    this, but if Mr. Housner's wife felt comfortable, since she  
11    has kind of talked with Mr. Bell and can say some of the  
12    differences in his personality, without disclosing any  
13    communications that they may have made, the government could  
14    call her as a witness and talk with her about that, if the  
15    Court thinks that somebody knew him in March -- and granted  
16    that she didn't work with him, though.

17            THE COURT: That's the problem. And that would be  
18    of limited value.

19            MR. LANCE BELL: I don't know what she is going to  
20    be willing to say versus the embarrassment to him. I guess, I  
21    am thinking, what are we going to read in AOL.com, and he is  
22    going to read it, and it's just going to devastate him because  
23    we've been real careful talking to him. And I know talking to  
24    her, their being very delicate on what they do.

25            I guess, and I don't have a dog in the hunt on what

1 they're doing other than Mr. Housner -- I guess, at this  
2 point, going through it with a family member and what I have  
3 been through, the embarrassment and shame it causes them when  
4 they realize and how they really try to go through extremes  
5 and hide it, you start having to hide things from them.  
6 Because I don't want to put him where he is reading it -- I  
7 think you got some jurors watching jurors, and they're looking  
8 at each other, they're like, okay, because there's one -- I  
9 think it was this one just shaking her head like, because he  
10 just was sitting there one time, and they wanted to help him  
11 answer.

12 I would hope there are some curative instruction that  
13 maybe the Court could say: Ladies and gentlemen of the jury,  
14 just so you know Mr. Housner -- the parties agree that Mr.  
15 Housner's had some medical problems; that the Mr. Housner you  
16 saw here today is not the same Mr. Housner you have heard  
17 about or will hear about.

18 He's had a lot of difficulties. Something along those  
19 lines. I think maybe more of curative -- and I am just  
20 speaking from his side -- that I would hope that the Court  
21 would do something of that nature rather than -- I can just --  
22 and I could ask him not to do, but I could just see somehow  
23 something -- I just don't want to embarrass him.

24 THE COURT: Let me just say this before I forget it.  
25 Mr. Bell, I saw you speaking to Mr. Faulk.

1 MR. LANCE BELL: I got another case that he was --

2 THE COURT: Okay. You may want to speak to Ms.

3 Housner and advise her to -- if they get the newspaper -- or  
4 it sounds like maybe Mr. Housner wouldn't be looking on AL.com  
5 on the internet.

6 MR. LANCE BELL: Let me say this, I don't think he  
7 does anything. I don't think he really communicates with  
8 anybody or does anything from talking to her.

9 THE COURT: Okay. Because there is the possibility  
10 that Mr. Faulk will report something from today's testimony.

11 Mr. Broome, you had a remark?

12 MR. BROOME: First off to Mr. Bell, I am trying to  
13 be as nice to him as I could be.

14 When Your Honor mentioned about bringing Mr. Housner  
15 back in, I guess, to testify some more in front of the two or  
16 three other witnesses, what if those three witnesses just  
17 talked to Mr. Housner here at the courthouse, maybe with you  
18 present?

19 MR. LANCE BELL: I tell you, he is like a hermit.  
20 He is withdrawn. That's what he talked about, I am  
21 antisocial. He is totally withdrawn from everything.

22 MR. BROOME: I didn't expect that answer.

23 THE COURT: Is that y'all's impression of Mr.  
24 Housner from two years ago, was he antisocial?

25 MS. WICK: I think that personality trait is

1 probably consistent. But I will say this, I think you are  
2 going to -- the testimony that Mr. Yelverton and Mr. Boyles,  
3 who worked at the Cullman dealership, who worked extensively  
4 with Mr. Housner, I think they are going to be able to testify  
5 that he was very involved, and that he was very on top of that  
6 Cullman store.

7 Mr. Green and Mr. Shepard are going to testify that he  
8 came to them and told them to RDR and told them to make the  
9 deal jackets. So I think you are going to hear more testimony  
10 that is what he was like then. And we can ask them, have you  
11 seen Mr. Housner since he left the dealership? Do you know  
12 what his health condition is now? And I understand this is  
13 not perfect, but I think there's going to be more and more  
14 testimony about what he was like in March 2013 from the people  
15 that he was working with -- and granted, they're felons. I  
16 will be honest with you, there were felons in this hearing  
17 that worked with him. So I don't know who else we could call  
18 that don't have criminal histories.

19 So I think you are going to hear, frankly, everything  
20 that supports Mr. Broome's claim that he did some of it. He  
21 had these conversations -- from people he had those  
22 conversations with, they're not going to come in here and say  
23 now, oh, that was his break -- they're going to say Mr.  
24 Housner came to me, and it's in all of their statements.

25 THE COURT: All right. Well, we will continue to

1 press forward. What I am trying to think about is if the  
2 Court gives an instruction, when the right time for that  
3 instruction may be -- because if I give the instruction first  
4 thing in the morning, that may color what the jurors think  
5 about the subsequent testimony from witnesses. So it may be  
6 better for me to wait until all of this evidence is in, and  
7 then give them an instruction.

8 MS. WICK: Well, I don't want to speak for defense  
9 counsel.

10 MR. BROOME: I am agreeable with that.

11 MS. WICK: I think the government's position is it  
12 would make sense to include it in with the general jury  
13 instructions.

14 THE COURT: I am not sure that I am going to do it  
15 in the general jury instructions --

16 MS. WICK: -- but at --

17 THE COURT: -- at the closing.

18 MR. BROOME: At least I will have to say something  
19 during closing argument about the person you heard today,  
20 yesterday, and day before.

21 THE COURT: What I plan to do is give the  
22 substantive charge before you all argue and then just give  
23 them cleanup instructions afterwards about appointing the jury  
24 foreperson and that sort of stuff.

25 Mr. Bell, we may be in touch. We may not. I

1 apologize for having to hold you back because I know you would  
2 have liked to have been able to walk out with Mr. Housner.

3 MR. BELL: Oh, he is waiting on me. I got to walk  
4 him to his car.

5 THE COURT: Is he driving?

6 MR. BELL: He's got a thing that tells him where to  
7 turn -- and yes is driving. I will call to make sure he makes  
8 it home.

9 THE COURT: All right. Very good.

10 MR. BELL: I tell you before last night, I didn't  
11 have a clue it was this bad. Because I really hadn't had any  
12 contact with him other than a couple of hours. In between  
13 Friday, I just thought something -- it was a bad day. I just  
14 didn't realize until last night how bad it was. Thanks,  
15 Judge.

16 THE COURT: Let me ask real quickly. Where are we  
17 time-wise in terms of how many more witnesses? Do you think  
18 we have another day of testimony?

19 MS. WICK: I don't think it will be a full day.

20 MS. MURNAHAN: Not a full day.

21 MS. WICK: It may go into the afternoon, but I don't  
22 think we'll go past tomorrow, let me put it that way.

23 THE COURT: We need to be able to talk about jury  
24 charges tomorrow afternoon or evening, then right?

25 MS. WICK: Yes.

1 MR. BROOME: I only have one witness.

2 THE COURT: Y'all will need to be prepared for that  
3 then for tomorrow. Once we're done with the evidence that  
4 comes in tomorrow, please. Okay?

5 MS. WICK: Okay.

6 THE COURT: Anything else you think we need to have  
7 in mind for tomorrow?

8 MS. WICK: Just a clarification point, in terms of  
9 the discussion of the proposed jury charges, is it only going  
10 to be -- understanding that you will have your separate  
11 ones -- but is it going to be just one that were filed in  
12 terms of what the defendant filed and what we filed?

13 MR. BROOME: That's all I got.

14 THE COURT: You all can request other charges based  
15 on the evidence that's come in. I think we talked about that  
16 at the pretrial conference that I had asked that you all file  
17 proposed instructions based on what you knew at the pretrial  
18 conference. If other instructions may be appropriate in your  
19 view, based on the evidence you have heard, I am not going to  
20 prohibit anyone from proposing additional or alternative  
21 instructions.

22 MS. WICK: I don't think the government would add  
23 any because we knew, I think, probably the evidence is -- I  
24 don't know if we knew -- so far Mr. Broome has heard our case.  
25 The government would just ask that if there's anything that



1 Mr. Broome is going to propose --

2 MR. BROOME: She didn't like my last one.

3 MS. WICK: We just want to know this in the  
4 opportunity to kind of see them before the conference.

5 THE COURT: Absolutely. You will have that should  
6 anything pop up based on what the evidence is tomorrow.

7 MS. WICK: Great.

8 THE COURT: All right. Very good. Well, thank you  
9 for your time.

10 MS. WICK: Thank you.

11 THE COURT: You all have a good evening.

12 (Proceedings concluded at 5:26 p.m.)

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